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POWER POLITICS AND WORLD ORGANIZATION

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Le Pouvoir est la manifestation suprême de la peur que l'homme fait à lui-même par ses efforts pour s'en libérer. Là est peut-être le secret le plus profond et obscur de l'histoire. Ferrero, *Pouvoir*, p. 43.

I

The current discussion of a future world order[1] has made it plain that the problem of coming international relations is of a magnitude surpassing even that of winning the war. It is not intended here to add to the rising tide of concrete plans in this field, but rather to elucidate certain proposals in the light of some basic features of the present system of international relations and, starting from a clearer picture of what is, to seek to discriminate between what is desirable and undesirable, possible and utopian. Wrong concepts of the forces underlying the present system have too often produced "peace plans" built on the sands of wishful thinking, and therefore bound to be wrecked on the rocks of reality. Disappointment caused by the failure of ill-conceived devices, in turn, is apt to produce a "realism" which ridicules any attempt to discuss international relations in terms of a possible evolution toward a more integrated stage.

Power, in modern international relations, has been the ultimate means of deciding issues and adjusting relationships among the units constituting international society. The states have regarded themselves as "sovereign" entities, not subordinated to any su-

[1] Cf., for example, the very thorough investigations of the Commission to Study the Organization of Peace, results of which have been published in Nos. 369 and 379 of *International Conciliation* (Apr., 1941, and Apr., 1942). An excellent bibliography is contained in the *Bulletin* of the Commission, Vol. 2, Nos. 5 and 6 (May-June, 1942), prepared by Hans Aufricht.

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perior political power nor guided in their power politics by considerations of an a-political, i.e., power-alien, nature. True, power-alien elements such as economic interests of a particular group or considerations of religious, moral, sentimental, or purely personal nature have from time to time diverted policies from purely power-mechanical lines, thus, e.g., lining up a Catholic country, against its own power interests, with another Catholic country, or having a state interfere with policies of another country not for reasons of power politics, i.e., out of self-interest, but because that country persecuted certain minorities or social classes whose interests the other state strove to defend. In spite of occasional "deviations," however, power politics has asserted itself in the long run as predominant in the international realm. Exactly as economic competition *within* states once created "economic man," eventually tending to drive out all economy-alien motivations, power-competition *among* states has created "powers," tending to drive out power-alien considerations and policies. Once power has entered the field at all, this must be the necessary result. For, should any single member of the system try to replace power politics quite generally by policies based on humanitarian or similar power-alien ideals, it would merely play into the hands of its competitors and thus weaken and eventually destroy itself. Any proposal for a reform of the system has to start from a realization of the compulsion which the system exerts upon each member and the inescapability which it implies as far as the policies of each single unit are concerned.

Power competition among several units of a system eventually leads either to the predominance of one of them or to the establishment of a system where the political units balance each other, and thus can continue to exist side by side. It was this latter alternative, the existence of an equilibrium—highly precarious and ever shifting though it has been—which has enabled the "modern state-system" to govern international relations in the last centuries.

In the time of its flowering, the balance-of-power system fulfilled two main functions: (1) to enable a plurality of autonomous political units to exist side-by-side, and (2) to allow these units internally to develop their own culture as "nations," a culture based mainly upon the values of individual and group autonomy within the state. Today, however, the system not only has become unable to fulfil these two main functions, but results in the contrary of what it had achieved in its "classical" period.

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Let us first regard the "external," or international, side of the problem. Here, the event which led to the destruction of the balance system was the growing, and now world-wide, interconnection of economic and other relationships in the industrial age and the ensuing interdependence of states. Under the compulsion of power-competition, each major power unit, in order to avoid dependence on any other unit, sought now to dominate ever larger regions in an effort to become "self-sufficient" and thus "secure." These attempts failed because in a shrinking world no single power can satisfy its security interests without doing harm to those of another power. The world is no longer large enough to harbor several self-contained powers. Thus the growing interdependence of the nations of the world led to the contrary of what "internationalists" had hoped its result would be; instead of making for peace and world order, it brought a struggle of powers to dominate the world in order to be secure from the world. The trend toward world domination or hegemony of a single power is but the ultimate consummation of a power-system engrafted upon an otherwise integrated world.

Within the states, an international system which allowed nations to develop an at least partly "civilized" peace-time society and economy of plenty has now resulted in what is called the totalitarian organization of state and society. Whatever the other roots of totalitarianism may be, it is easy to see what bearing power competition must have on its development. To compete successfully with other powers, states had to subordinate every realm of life and society to the requirements of war and "preparedness." Wars which used to be localized and not interfering with "ordinary civilian" life have become "total" wars which no longer recognize regions and spheres outside war, and are characterized by the destruction of mankind's accumulated wealth ("scorched earth policy," etc.) and the extermination of entire populations. But "total war" means also obliteration of any distinction between times of "peace" and of "war." Any period outside actual warfare necessarily becomes one of war preparation, since not using it for this purpose means giving an advantage to a potential enemy who does so. The relentless consequence is that states had to be organized not only so that foreign policies are conducted with an exclusive view to the furtherance of power interests, but so that every realm of the political, economic, and cultural life of indi-

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viduals and groups is regulated with this same view in mind. Therefore more and more "living standards" are sacrificed for war production and war potential. Moreover, since every moral or other "inhibition" might weaken defense requirements, more and more "standards of civilization" and cultural values are discarded in favor of the fascistization of man and mind. Thus an age of liberal and individualistic tendencies in the internal life of countries has been replaced by that of régimes which consolidate populations into iron *blocs* ruled through managed and centralized mass-control, and where all of economy becomes *Wehrwirtschaft*, cultural life *Wehrkultur*, religious life *Wehrgottesdienst*. Power competition drives remaining non-totalitarian states into entering the same route. All this means the *reductio ad absurdum* of our present societal organization: Man may starve (both physically and spiritually) while in the possession of the most costly and most formidable machinery ever created for the protection of lives and goods.

History, so far, has not meant progress toward less war and conflict and more peace and harmony, but only the transfer of competition and strife from smaller to ever larger social groups. The perpetuation of this system on the world-level not only would mean that the bottom is out of our civilization (which, like every previous one, has been built on mitigation, or at least canalization and balancing, of power in certain realms and spheres), but might well signalize the decay of man as a race. Unable to escape the vicious circle of mutual fear, insecurity, and conflict for power and to eliminate the life-and-death struggle from the societies formed by his own kind, the "victor over Nature" may turn out to have been but another among Nature's abortive attempts to create a species capable of survival.

Some problems of future international relations will now be examined in the light of these facts. Provided that world-domination on the part of the totalitarian powers has been successfully averted, it must first of all be realized that the post-war world will still be one of powers. More than that, it will be a world of "total suspicion," worse than at any time before; for what happened in the years preceding the war will not so soon be forgotten. Totalitarian conduct of foreign affairs, with its utter disregard of traditional standards and its uninhibited use of any means furthering the end, lying and betraying, "fifth columnism," ideological warfare, will have left its impact, and there will probably be less confidence

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among individuals and nations than at any time in history. We must face the fact that this will be the basis on which to erect a better world order.

II

The various proposals for a new order of world relations can be divided roughly into three categories:[2] first, one which leaves the "sovereignty" of states basically intact while providing for their voluntary engaging in what may be called "negative obligations"—certain duties of abstention in order to eliminate or diminish the danger of war. Second, at the opposite extreme, one which would abolish nations in their capacity as independent powers and replace them by some super-state authority or government. A third category of proposals, while retaining the system of coëxisting powers, would combine them in a system with one particular "positive obligation"—their duty to concur in collective prevention of the individual use of force, a system of "collective security."

1. The first, and least ambitious, view holds that the danger of war can be ended or greatly diminished if only the nations of the world would enter into all or some of the following undertakings: in the field of military preparation, not to arm too heavily, or to renounce the use of certain weapons—in short, to reduce armaments; in the economic field, to renounce certain instruments of "economic warfare," such as high tariffs, raw material monopolies etc.—in short, to establish free, or freer, international trade relations; in the political and diplomatic field, to renounce the right to have recourse to war, at least for certain types of conflicts, and instead to settle disputes peacefully—a system of mediation or arbitration.

These are the steps and procedures commonly proposed by "internationalists," and partly tried in the practice of states during the last hundred years. Surveying these practices means surveying their failure. This could not be otherwise, since all imply an at least

[2] Among these we need not include proposals which, though sometimes under high-sounding new names such as geopolitics, are nothing but elaborations of the existing system of limitless power politics. It is significant that *Geo-Politik* has been the ideological basis of Nazi foreign policy. Its adoption by the victors of this war would not make the system any different from what it was when Haushofer inspired Hitler. However, it must be recognized that such proposals contain the only *realistic* alternative to a more integrated international system. Future wars for supremacy would be wars between a few super-powers organized in *Grossräumen*. There is no going back to the system of sixty independent nation-states.

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partial renunciation of power, while, on the other hand, the system of power politics, with power competition and ensuing individual and collective insecurity, is left intact. These proposals thus mean putting the cart before the horse. Even a simultaneous and entirely "equal" renunciation of certain uses or instruments of power on the part of all states (if ever practicable) would in its continued fulfilment be guaranteed only by the good-will and honesty of each power, over-confidence in which, on the part of those to whom the conduct of affairs is entrusted, might be considered a dereliction of their duty toward those whose lives and goods are to be protected against foreign spoliation. In a system of power politics, any major concession can be due only to temporary forgetfulness of the necessities of the system, constituting, as it would, a gratuitous favor to those who would not take part in the engagement or were least faithful in its execution.

Disarmament, in particular, which so often has been said to constitute the main prerequisite for the abolition of "insecurity" in the world, could in reality be obtained only *after* the establishment of a firm security system, since only a lessening of the feeling of insecurity could bring about a general reduction of power instruments. Moreover, war *potentials* constituting the backbone of modern preparedness, mere reduction of actual armaments would eliminate neither war's possibility nor its root, the competition of states for power.

For the same reason, any large amount of economic internationalism cannot be preparatory for, but only consecutive to, a state of lessened political tension. Recent events have shown that the requirements of power politics, in this realm, prevail even over strong tendencies and interests of an economic nature which in themselves would be in favor of increased and freer trade relations. In the nineteenth century, an even higher degree of economic internationalism and of corresponding vested interests in the continuation of the peace which makes these relationships possible was not enough to change basic power policies. "In the long run power politics demands power economics."[3]

As for arbitration, its apparent success in certain instances has been due to the fact that recourse to it has been had mainly in the case of minor issues or minor countries, while *maxima non curat praetor*. Under the prevailing system, similar efforts to take out of

[3] G. Schwarzenberger, *Power Politics* (1941), p. 271.

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power politics certain issues or regions and to administer them in a de-politicized way, e.g., "international" control of "backward" regions, "neutralization" of strategically important areas, straits, canals, etc., or "technical" management of minority or migration problems, likewise ended in failure. In times of international crisis, these realms were regularly reoccupied by power interests. With the extension of the power system all over the world, any power-alien latitude still open to earlier periods has become impossible. As long as this system lasts, it cannot be restored.

2. Those disappointed with the aforementioned procedures are today, for the most part, looking toward the establishment of "world government" in the form of a genuine federal government over and above existing states. In order to understand the implications of this scheme, one must first realize that it would by no means abolish "power," or even mitigate it, but would merely transfer its central seat from the "sovereign" states to a new higher unit of governmental power, the federal union (or whatever its name). Whatever the details of such a set-up, there must be a central authority with legal competence and actual power to monopolize the use of force in the world, thus depriving the member-"states" of their real power (whatever secondary competences might be left to them).

A like scheme cannot from the outset be called utopian. History has witnessed many shifts from one kind of societal organization to another, involving a transfer of the seat of ultimate power, e.g., from tribes to the *polis*, from feudal groups to the "state." Such changes, however, require also shifts of ideologies and transfers of "allegiance." Besides all organizational changes, there would, in the case here discussed, be one fundamental prerequisite: the shift of allegiance, by at least a politically effectual number of individuals, from nation-state to world-state, thus replacing national loyalities with an entirely new loyalty toward the new highest unit of authority. Where comparatively small groups are politically decisive, similar transformations might imaginably take place without too great difficulty, but in an age of politically activated masses whose ultimate loyalties have come to be molded almost exclusively into one toward the nation, the change from nation-state to world-federation would require more than ever a tremendous political effort. Nothing short of an ideological and spiritual revolution would be required in order to eradicate "na-

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tionalism" from the minds in favor of "world patriotism." This, however, is not likely to happen in a world of still mutually suspicious "powers."

It would be illusory to think that the new allegiance might simply be added to existing loyalties. Eventual decisive power cannot be expected where loyalties are divided. Since the main function of the new world government would for a long time be to prevent recourse to force on the part of member-units (outlawry of war and monopoly of coercion by the federal government), such division of loyalties would in all likelihood fatally hamper the functioning of the highest authority. In a test case, the federal authority would be revealed as either a sham, with one or more old-style "powers" really controlling it,[4] or else as a pseudo-authority with no actual power at all, in which event, at a critical juncture, it would simply disintegrate into its component parts, the founding powers. Thus, a lack of ideological and psychological prerequisites, not politico-organizational difficulties, would appear to make this plan impracticable. This does not mean that, once the problem of security and power-competition has been solved, federalism or some similar form of more integrated world-government might not gradually evolve from the new basis. But, for the reasons stated, it seems too radical a step from the existing system of power politics toward a new order of international relations.[5]

3. A system of "collective security" would be midway between impracticable super-state government and ineffectual obligations of abstention from certain activities. It means the establishment of a system of general security through collective sanctions against the use of force. Recourse to force on the part of any individual state as a means of power politics would immediately encounter the active opposition of a coalition of all remaining states which would have committed themselves beforehand to the enforcement of peace in such an event. Apparently, this system would increase

[4] This would probably appear first of all in the sphere of military organization, regarding the control of the "international army" or "federal police force," which, after all, must be stationed somewhere, with ultimate command emanating from somebody, etc.

[5] The foregoing discussion has been concerned with federalism as a proposal for *world* government, and not with the various plans propounded for one or another *regional* federations of existing states. Such schemes may be entirely practicable, but obviously would leave the major problem, that of competing power units, unsolved.

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the range and possibilities of war instead of diminishing them, because it would replace the individual power's "right" to make war by a duty to make war, and a world-wide war at that, in the event of individual aggression. The underlying idea, of course, is to eliminate total wars by the threat of a still more total one, since each state resorting to war or other violence would have to face a world-wide coalition, with the result—so it is hoped—that the very threat of such opposition would deter it from starting such a venture.

This scheme would not do away with the existing society of states as such. It would not even eliminate the "power" of states as a basis of international relationships. However, it would organize the use of power in such a manner as to avoid the vicious circle into which traditional power politics, with its ever-increasing "insecurity because of mutual dependence," has run. Organized collective use of force, or the threat of its application, would be made the instrument for preventing or suppressing its individual application. The deadlock of a system under which insecurity makes for wars, and wars—since they cannot give any power that real security which today could come only from world-domination —engender more insecurity, would be broken. It would mean the adaptation of the balance-of-power principle to modern conditions. Since every war today, through the mechanism of power-competition, tends eventually to involve all powers, these would ultimately have to take part in an attempt to reëstablish the balance anyway. Therefore, each of them would seem to have more interest in preventing such "unorganized" wars than in its own continued right to make, or abstain from, wars whenever it pleases. Since today no single power is independent enough to play the rôle which Great Britain traditionally played vis-à-vis the Continent, namely, that of the decisive weight which could be thrown into the balance to turn the scales one way or the other, a balance creating general security can be established only through collectivization of the force to be thrown against its attempted individual use. This presupposes that the system be world-wide, and that the outlawed individual recourse to force, if occurring at all, remain limited to single cases and powers. Otherwise the result would be merely the formation of another system of antagonistic *blocs* and alliances.

What are the chances for the working of such a scheme, if ever adopted? As one knows, it has not worked during the League of

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Nations period. But the difficulties encountered were not those mentioned by most of the more skeptical observers. Thus the determination of the aggressor in a particular situation—a problem often pictured as one of insuperable difficulty—in practice proved easy, at any rate so far as technical standards of determining who "first started it" were concerned. Here, the situation used to be clear and unequivocal.[6] Although certain standards of determination will have to be worked out, along with the whole machinery of the system, this problem seems to be of comparatively minor difficulty. A further objection was that collective sanctions would require common preparation for hypothetical wars of every imaginable combination—grand strategies, so to speak, against every state by all remaining powers. This, it was said, would defeat the whole scheme, since the potential aggressor would have to coöperate in, and thus know, the plan for its own defeat. In reality, this means only that plans for sanctions would have to be adopted after the aggression has occurred and the aggressor has been duly determined. While this would give the aggressor the advantage of time gained by surprise, it would not appear likely that even in an age of *Blitzkrieg* all or the major part of the other states could be overwhelmed before having a chance to react. If all states are ready to participate in sanctions, even after the immediate victim of aggression has been overrun, permanent success of the aggressor seems scarcely possible.

The fundamental difficulty is not technical or strategic, but political and psychological. Beyond organizational, institutional, and legal requirements, the system presupposes for its successful working one main politico-psychological *datum:* the realization, on the part of political leadership and public opinion in the various countries, that each country in the world, be it geographically or politically "near" to or "remote" from the location of immediate conflict and aggression, has exactly the same, and a superlative, interest in its suppression. Any rational analysis of recent developments of power politics makes it clear that from the viewpoint of each state's very existence, its interests are equally involved by any breach of peace wherever occurring. This conclusion is based

[6] The problem of identifying the aggressor has to be distinguished from the question of who, with respect to the underlying conflict, is right or wrong. This latter problem involves that of how "fair" and "just" decisions of international disputes can be obtained—a question touched briefly at the end of this article.

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upon a realistic appraisal of such facts as the changed nature of war and the universalism of the mechanism of power competition. Just as there are "no islands any more" (nor hemispheres for that matter), there are today no longer "producers" of security as opposed to "consumers," as a writer in the 'twenties[7] characterized the then allegedly diverging interests of powers regarding the fulfilment of the sanctions and obligations contained in the Covenant of the League of Nations. Any attempt to avoid this conclusion by "appeasing" aggressors or "isolating" oneself either leads to one's self-destruction or merely defers one's involvement to a moment when the situation has become more dangerous through the strengthening of the adversary. Turning from power politics to collective security, therefore, means the adoption of a more rational scheme of international relations, just as balance-of-power politics at one time meant a comparatively rational system based on the elimination of certain power-alien elements in favor of *raison d'état*.

Collective security, then, rests on the realization, with appropriate action, of what the states' common interests in their continued existence require today. However, the rationality of a scheme is in itself no guarantee of its adoption or application. The basic problem confronting a plan for collective security is whether people throughout the world are likely to realize the fact and are ready to act in a bold and novel way. More skeptically inclined persons will probably pronounce this requirement fatal. They will doubt whether people at large will suddenly adjudge necessary, and even advantageous, what for centuries has run counter to the actual or imaginary interests of their countries and still today appears to many as nothing but self-denying sacrifice. To this, one can reply only that men sometimes learn from bitter experience. While it took the average Englishman from World War times to 1940 to comprehend that the airplane had changed his country's strategic, and therewith political, position, actual bombardment, coupled with the threat of immediate invasion, caused him to learn in a few days what he failed to learn in twenty years. Similarly, Pearl Harbor and what may ensue will have opened the eyes of many an American who failed to realize earlier that sanctions against a Japan still at the boundary of China proper might have been preferable to a "war of survival." The question, of course, remains

[7] S. de Madariaga.

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whether the impact of experience will be sufficiently strong and general, and not too quickly forgotten. Without engaging in futile prophecies, it can at any rate be stated that there is no inevitability in provincialism, considering that, e.g., the man from Oregon (and even the Kansan) well understands that an attack on New York or Florida is of immediate concern to him, while New Zealanders (and even some South Africans) view similarly an assault on Britain. Lack of these politico-psychological prerequisites, it is true, accounts for the failure of the League's system of sanctions; nor was Ethiopia the only or nearest of those "far-away countries" of which the leaders of the decisive powers pretended to "know nothing." But those studying the details of the first and only sanctions experiment also know that success was actually nearer than commonly realized. The people, or at least those parts of public opinion uninfluenced by Fascist or pro-Fascist propaganda, were in most countries more advanced in grasping their real interest than were their leading statesmen. After the experience of another world war, a better understanding of the failures committed during its pre-history may bring the case for collective security sufficiently near to common people of all groups and countries to make the scheme practicable. Still, a sudden reaction toward isolationist and provincialist illusions, brought about or exploited by groups with vested interests in the previous system, may neutralize and destroy the impact of this experience on the future world settlement. If this should happen, nothing could then prevent the world from becoming the victim of the only alternative: renewed power politics, with recurring world-wide wars on a probably accelerated scale, produced by the necessity felt by one power or another to bring about a situation in which alone it could have real "security": world-dominion. Some day this aim may be achieved by somebody; but it would be in a world where the last remnants of a diversified civilization had disappeared.

The establishment of collective security, on the other hand, would by no means herald the millennium. It would have to take shape in an atmosphere still full of suspicion, since competing powers, just emerging from a life-and-death struggle, would still exist at its start. There would be armaments and economies geared for war; and these national systems would have to be organized for sanctions-preparedness instead of individual warfare. It might even be dangerous to change the system too quickly into one of

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more peaceful activities, because the new collective system would first have to stand the test of its real working, either by introducing a period of prolonged absence of violence due to general preparedness for sanctions, or by a successful application of sanctions in an actual case of aggression. One such practical application of the system would probably be sufficient to ensure peace for a long time.

Then, after a rather lengthy period of trial and transition, those policies could be inaugurated which are necessary for the transformation of the existing system into a substantially more peaceful one, but which presuppose existing security for their successful working. Thus, in the same measure as suspicion of ever-present danger of attack and the pre-possession of minds and actions with war-preparedness and security would lessen, a gradual return to more genuine peace-time activities would become possible. This would apply to all realms, internal as well as international, cultural and economic as well as political. Then, and then only, economic preparation for war could be replaced by economic and social planning for plenty within states—something which under conditions of power politics only meant weakening one's potential war strength. At the same time, an attempt could be made to establish closer international trade relations also. Step by step, with the enlargement of such activities, some reduction of armaments could be mutually agreed upon, although military preparedness could not be allowed to lapse altogether as long as the threat of effective sanctions must be maintained.

Even so, a collective security system would still be confronted with one grave challenge. It would be necessary to find a procedure for the solution of those problems which in the age of power politics were solved by force, and which now would no longer be amenable to such solution. For it must be realized that the mere elimination of force as an instrument for the settlement of international issues and relationships at first would necessarily, and only, mean freezing the existing *status quo*. Since it would be based on victory and defeat in a world war, this *status quo* would be rather arbitrary, even though based on the victory of the less totalitarian and the defeat of the more aggressive powers. Unless an effective procedure for "revision," i.e., some kind of international legislation, were devised, not even sanctions could in the long run prevent the countries of the world from rallying again in camps of real or alleged "haves" and "have nots." Changes which under prevailing power politics

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were brought about by use or threat of force must have a chance to be effectuated in a peaceful way. "Just" decision must replace what formerly was decision by force. Among formidable problems would be such ones as the status of colonial territories and populations, the position of minorities, the shift of populations from country to country. The fundamental issue would be nothing less than finding rational solutions for what rarely, so far, has been regulated in other than irrational ways. It would be more than optimistic to hope that "inherent justice" rather than compromise would be the main device in the adjustment of still clashing interests of still more and less influential, stronger and weaker, parties, at least for a long time to come. This will, then, still be an age of relative fallibility, not of accomplished rightfulness. But it must again be emphasized that all these experiments and procedures require the previous solution of the most urgent problem, the organization of power for general security. Not before mankind has achieved "freedom from fear" can any stable basis be laid for a progressive realization of its age-old aspiration for "freedom from want."

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RECENT RESTRICTIONS UPON RELIGIOUS LIBERTY

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Within the last five years, the Supreme Court of the United States has added decisions of greater importance to the case law of religious freedom than had been accumulated in all the years since the adoption of the Bill of Rights. The importance of two of these recent decisions rests upon the subordination of freedom of action based on sectarian beliefs to the restrictions of society as a whole. In one of the two cases, the law of society was a board of education order that school children participate in the flag salute exercise on pain of expulsion from the public schools;[1] in the other, it was peddlers' license tax ordinances.[2] Because neither of these decisions has been accepted as a firmly rooted precedent, it will be well to examine them in the light of the history of the federally secured right of religious freedom and in the light of the immediate public reactions to them.

A considerable proportion of the early emigration to the thirteen original colonies was undoubtedly due to a desire to escape religious persecution in England and on the Continent. Those colonists, however, were as insistent that their own particular form of religion be adhered to as their oppressors had been. The story of Roger Williams, who was expelled from the colony of Massachusetts because of his non-conformist views and who established the colony of Rhode Island as a sanctuary of religious tolerance, and that of Ann Hutchinson, who also was exiled from the Bay Colony for a like reason, are monuments to the intolerance of the Puritans.

But by the time of the adoption of the Constitution, the principle of religious freedom which Roger Williams so stoutly advocated and put into practice in Rhode Island had gained such headway that its omission from the law of the land was at once protested; and, significantly, the first tenet of the so-called Bill of Rights was a cure of that want: "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, . . ."

It will be observed that this declaration is an inhibition only on the federal government. It does not prevent the states from doing

[1] Minersville District v. Gobitis, 310 U.S. 586 (1940).
[2] Jones v. Opelika, 316 U.S. 584 (1942).

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the things thus prohibited to the Congress.[3] The amendment embodies the principle of the separation of church and state. In the words of the Supreme Court, it was designed to allow everyone under the jurisdiction of the United States to entertain such notions respecting his relation to his Maker and the duties they impose as may be approved by his judgment and conscience, and to exhibit his sentiments in such form of worship as he may think proper, not injurious to the rights of others, and to prohibit legislation for the support of any religious tenets or the modes of worship of any sect.[4]

The right to think as one wishes regarding religion can scarcely be doubted; the question which today seems to prompt the action of the secular authorities is the right to practice religious dictates. The rule in this regard is old and sound. It is, briefly, that there is a right to practice any religious principle and teach any religious doctrine which does not, as above indicated, injure the personal rights of others, nor offend the laws established by society for peace and morality.[5] The example that at once comes to mind as illustrating the overreaching and abuse of religious freedom is the practice of polygamy by the Mormons. This practice conflicted with the bigamy laws of the territory of Utah, and it was held that no religious conviction supporting it could excuse a breach of the law.[6]

In one such case, the Reynolds case, the Supreme Court quoted the highly significant preamble of "An Act Establishing Religious Freedom" drafted by Thomas Jefferson for the state of Virginia: "That to suffer the civil magistrate to intrude his powers into the field of opinion, and to restrain the profession or propagation of principles on the opposition of their ill tendency, is a dangerous fallacy which at once destroys all religious liberty. . . ." It was time enough, the Act declared, to invoke the powers of civil government when the practice of opinions resulted in overt breaches of peace and good order.

In keeping with these principles, the federal courts have refused to review a decision of an ecclesiastical tribunal on religious matters.[7] Nor would they question a will creating an endowment for a

[3] Permoli v. New Orleans, 3 How. 589, 609 (1845).
[4] Davis v. Beason, 133 U.S. 333, 342 (1890).
[5] Watson v. Jones, 13 Wall. 679 (1871).
[6] Reynolds v. United States, 98 U.S. 145 (1878); Davis v. Beason, 133 U.S. 333 (1890).
[7] Watson v. Jones, 13 Wall, 679 (1871).

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school and providing that no religion be taught there, nor any cleric be allowed on the grounds.[8] On the other hand, a prosecution of persons pretending to occult powers as a part of a scheme to use the mails to defraud is no violation of the First Amendment.[9]

The Fourteenth Amendment has now become recognized as a bulwark against state infringement of the same religious liberties which the First Amendment secured from federal interference.[10] Religious freedom is so elementary to the concept of ordered "liberty" that it must be said to be within the meaning of that term in the Fourteenth Amendment,[11] which reads, in pertinent parts, as follows: " . . . nor shall any state deprive any person of . . . liberty, . . . , without due process of law, . . ." The liberty of religion protected from state interference by this amendment includes the absolute right of any person to entertain whatever views regarding religion his conscience may dictate, and the right to exercise those beliefs in such ceremonies and practices as do not conflict with the laws of society for peace and good morals. Any invasion by a state of the right to believe as one sees fit would undoubtedly be considered arbitrary, and hence violative of due process; and so would a state infringement of the right to exercise those religious beliefs unless such exercise conflicted with the secular laws regarding peace and good morals.

This brief review brings us to a consideration of the cases decided by the Supreme Court in the last five years. A small religious sect or society known as Jehovah's Witnesses has served as the guinea pig for all the important cases in this period.

The Jehovah's Witnesses are the followers of the religious doctrines formulated by the late pastor, Charles T. Russell. Russell was born in Pittsburgh in 1852 and was brought up in the Presbyterian faith. At the age of sixteen, he decided that the then existing schools of religious thought were wrong, and he built up a religion of his own, centered around calculations as to the second coming of Christ and the battle of Armageddon. His followers, formerly

[8] Vidal *et al.* v. Girard's Executor, 2 How., 43 U.S. 126 (1844).

[9] New v. United States, 245 Fed. 710 (1917). See also "Criminal Aspects of Fortune-Telling," *Moody's Monthly*, July, 1942, by Pvt. I. H. Rubenstein. Rubenstein was prompted to write this article by the increase of fortune-tellers as an incident of the present war.

[10] See Hamilton v. Regents, 293 U.S. 245 (1934).

[11] See Palko v. Connecticut, 302 U.S. 319 (1937). It should be noted that most state constitutions already contain provisions similar to those of the First Amendment of the federal constitution.

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known as "Russellites" but adopting the name "Jehovah's Witnesses" in 1931, believe that their highest function is to disseminate their interpretations of the Bible and their religious beliefs. To accomplish this purpose, a non-profit, non-stock corporation was founded in 1884 under the laws of Pennsylvania, and now known as the Watch Tower Bible and Tract Society. The corporation owns printing plants located in Brooklyn, New York, Berne (Switzerland), and other places, and these plants are devoted to the printing of books, magazines, and pamphlets embodying the Witnesses' beliefs. The corporation also supplies Witnesses with phonographs, public address cars, and recorded explanations of the contents of the large volume of printed matter. Armed with the Society's publications and with the portable phonographs, individual Witnesses carry out their conviction that they must spread the gospel as they see it by street corner and door-to-door distribution of the books and bulletins.

Publications of the Society contain highly contentious teachings. They attack all institutionalized churches and sects as things of Satan. The members decry any form of religious ceremony and, in this connection, they refuse to salute the flag because they believe that that practice runs counter to the commandment that they should not bow down to any "graven image."[12] The Society teaches "that we are not of this world" and discourages Witnesses from participation in politics or the support of war. Each Witness claims to be a minister of the gospel.[13]

These beliefs have occasioned intense animosity in every state of the Union, and the virulent attacks on institutionalized religion, particularly the Catholic church, are highly offensive to many people. Small town officials are flooded with protests on those days when the "witnessing" activities are being carried on. As a result, peddling and solicitation ordinances have been applied as a restraining mechanism. The religious convictions against the flag

[12] The Jehovah's Witnesses' position somewhat resembles that of the early Christians who were martyred for rejecting the symbols of the self-deified Roman emperors. The resemblance is incomplete, however, because the flag has no parallel religious significance.

[13] This claim has been advanced before local boards of the Selective Service System as the basis for demands by individual Witnesses for draft exemption under Section 5(d) of the Selective Training and Service System Act of 1940. In Opinion No. 14, Vol. III, National Headquarters Selective Service System, it was recognized that those Jehovah's Witnesses who devoted their full time to the Society's activities were in a position to be considered by local boards as ministers of the gospel.

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salute and against military service have aroused the ire of patriotic groups such as veterans' organizations, and this has occasioned further protests and often mob violence. In those communities where local or state law requires that children in public schools salute the flag, numerous school children adhering to the Jehovah's Witnesses' belief have been expelled for refusing to do so.

In due course, these questions have come before the Supreme Court. The first of the decisions, in 1938, involved an ordinance of the city of Griffin, Georgia, making it a nuisance to distribute literature such as leaflets and handbooks within the city limits without first obtaining permission of the city manager.[14] The defendant, Alma Lovell, a Jehovah's Witness, was convicted because she distributed Watch Tower and Bible Tract Society literature without seeking a permit. In holding the Griffin ordinance unconstitutional, the federal Supreme Court invoked the free speech and free press guarantees of the Fourteenth Amendment, stating that the local law was void on its face because it forbade every sort of distribution except such as the city manager saw fit to allow. The significance of this opinion to religious freedom was the tacit and not much disputed acknowledgment that free religious expression is protected by the Constitution's free speech and free press guarantees.

The next case extended the above rule to an Irvington, New Jersey, ordinance requiring canvassers and peddlers to register with the chief of police and secure a permit from him.[15] The provision which allowed the chief of police to refuse a permit, if he determined that the applicant's character was not good or his canvassing project not free from fraud, was held to give the local officer too great a discretion in deciding for himself what ideas were good or bad. The "free speech" involved was again free religious speech.

In Cantwell v. Connecticut, the defendant Witnesses ignored a state law requiring that before persons might solicit money for a religious cause they must first apply to the secretary of the local public welfare council, who was charged with the responsibility of providing a certificate if he found the cause to be a religious one.[16] This, the Supreme Court ruled, unconstitutionally authorized the

[14] Lovell v. Griffin, 303 U.S. 444 (1938).
[15] Schneider v. Irvington, 308 U.S. 147 (1939).
[16] 310 U.S. 296 (1940).

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secretary of the public welfare council to censor religion. The necessity that he pass upon the question of what was or was not a religious cause was a prior restraint on the freedom of religion. It was conceded that if fraud occurred under the guise of religion, it could be punished, and again if a general system of regulation of solicitation were established without any religious test, and not unreasonably burdening solicitation, it would be valid.

Cantwell not only had been convicted of soliciting without the required certificate, but he was also convicted on a charge of inciting a breach of peace. His street-corner phonograph recital had attacked institutionalized religions and had aroused the ire of a Catholic audience. The Court said that even though the expression of this view of religion might be very offensive to some, yet no conviction could be predicated upon it, because the right of freedom of expression protected it.

These three cases were favorable to the Jehovah's Witnesses with regard to their right to distribute religious literature, to solicit funds, and to present peaceably their unorthodox views. The Cantwell case reiterated the well established rule that the right to think and believe what one wishes about religion is absolute, while the right to act and speak in accordance with those views is subject to limitation in the interest of peace and good order. Cantwell's demeanor had been courteous. He might not have fared so well had it been otherwise. In 1942, in Chaplinsky v. New Hampshire, the Court considered the case of an over-zealous Witness convicted under a New Hampshire statute against the public use of abusive language against others. The defendant had called a police officer a "damned Fascist" and "a god-damned racketeer." The Court did not think this an exercise of religion, since the statements contributed nothing to the exposition of the defendant's ideas. The so-called "fighting words" were held not to be under the protection of the Constitution 315 U.S. 568 (1942).[17]

[17] The objection is often made that one religious sect should not be protected by constitutional guarantees when its members verbally abuse other religions. A test of this view came under a New Jersey statute which made it a misdemeanor to make statements in the hearing of two or more persons which incite or advocate hatred against any group on the ground of race or religion. In a case involving German-American Bund antisemitic utterances, the New Jersey supreme court held this statute so vague that it conflicted with the free-speech and religious-freedom guarantees of the Fourteenth Amendment. State v. Klapprott, 127 N.J.L. 395 (1941). Jehovah's Witnesses had been prosecuted under this same statute. But see Cantwell

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In a case arising in New Hampshire, the Supreme Court upheld a state statute prohibiting street parades without a special license.[18] A group of Jehovah's Witnesses had marched in a line carrying signs along a busy intersection in the city of Manchester on a Saturday night. The act, as limited by state decisions to apply only to formation marches in a public thoroughfare, was ruled to be a reasonable police measure; freedom of assembly and of expression giving way slightly to public convenience. These decisions resulted in no discussion or public reaction of any moment, and appear to have been generally accepted as sound.

The two decisions mentioned at the outset remain to be considered. One was in 1940 and the other in 1942. The earlier was Minersville District v. Gobitis, 310 U.S. 586 (1940). The school board of the Minersville school district made a ruling that all children attending the public schools of the district should give the flag salute at the opening of the school day. The children of Walter Gobitis attended those schools, being, however, Jehovah's Witnesses, and as such holding the religious conviction that to salute the flag was to disobey the commandment of the Bible against obeisance to a graven image. They were expelled; and Gobitis applied to the federal district court for an injunction against enforcement of the expulsion order.

On December 1, 1937, Federal District Judge Maris denied the defendant school district's motion to dismiss the injunction suit.[19] He said public officials should not question the religious basis of a sincere refusal to act when public safety, health, or morals, or personal or property rights, were not prejudiced by such refusal; the refusal to salute the flag because of religious convictions did not involve such dangers. It was pointed out that the effect of the ruling of the school board was to make the flag, which is a symbol of religious liberty, a means of imposing a religious test as a condition of receiving the benefits of public education. Later, Judge

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v. Connecticut, 310 U.S. 296, 309, and 310 (1940), discussed above, in which the federal Supreme Court indicated that the free speech guarantees of the First and Fourteenth Amendments did not protect statements so profane, indecent, or abusive to the person of a listener as to amount to a breach of peace.

[18] Cox v. New Hampshire, 312 U.S. 569 (1941). And compare Leiby v. Manchester, 117 F. (2d) 661, holding that the distributors of literature and periodicals must comply with an ordinance requiring buttons to be secured from the superintendent of schools, who had no discretion to refuse them. Cert. den. 313 U.S. 562 (1941). [19] 21 F. Supp. 581, E.D. Pa.

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Maris granted the requested injunction against the enforcement of the "salute or be expelled" order of the school board.[20] It may be noted parenthetically here that in the years 1937 and 1938 the Department of Justice received exactly three letters concerning the Jehovah's Witnesses; the following year, 1939, apparently as a result of American reactions to the spreading conflict in Europe, numerous complaints were made to the Department regarding attacks upon the Witnesses.

On March 4, 1940, the United States Circuit Court of Appeals for the Third Circuit sustained the Gobitis injunction in a cogent opinion.[21] The Court noted that the conflict boiled down to a question of whether the flag-salute requirement was such a rule of society for safety and good morals as must take precedence over liberty of conscience. It observed that the Minersville school board rule imposed, not a prohibition upon action, but rather a command to do an act, and concluded that it was not of sufficient moment as a device for instilling respect for country to outweigh freedom of religious conscience. If invoked, it was held, the rule denied the religious freedom on which is based a great measure of the respect due this nation and its flag.

But both lower courts were reversed in the federal Supreme Court on June 3, 1940.[22] Mr. Justice Frankfurter, speaking for the eight-to-one majority of the Court, acknowledged the question as being one of balancing a rule of political society against considerations of religious freedom. His conclusion, however, ran contrary to that of the circuit court. The necessity for cohesive patriotic sentiments was felt to be more important than the non-conformist religious views of the Witnesses. Said the majority:

"Our present task then, . . . is to reconcile two rights in order to prevent either from destroying the other. . . . National unity is the basis of national security. . . The precise issue, then, for us to decide is whether the legislatures of the various states and the authorities in a thousand counties and school districts of this country are barred from determining the appropriateness of various means to evoke that unifying sentiment without which there can ultimately be no liberties, civil or religious. . .

[20] 24 F. Supp. 271, E.D. Pa., June 18, 1938. [21] 108 Fed. (2d) 683.

[22] The Supreme Court had on four previous occasions upheld flag salute regulations in *per curiam* decisions: Leoles v. Landers *et al.*, 302 U.S. 656 (1937); Hering v. State Board of Education, 303 U.S. 624 (1938); Gabrielli v. Knickerbocker, 306 U.S. 621 (1939); and Johnson v. Deerfield, 306 U.S. 621 (1939), rehearing denied, 307 U.S. 650 (1939).

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So to hold would in effect make us the school board for the country. That authority has not been given to this Court, nor should we assume it."

The Court then declined to question the choice by the school board of the flag exercise as an appropriate means to instill patriotic sentiment.

Admittedly, there are difficult questions involved here. Before attempting to suggest a solution, it will be well to review the effect of the decision.

Between June 12 and June 20, 1940, hundreds of attacks upon the Witnesses were reported to the Department of Justice. Several were of such violence that it was deemed advisable to have the Federal Bureau of Investigation look into them. At Kennebunk, Maine, the Kingdom Hall was burned. At Rockville, Maryland, the police assisted a mob in dispersing a Bible meeting. At Litchfield, Illinois, practically the entire town mobbed a company of some sixty Witnesses who were canvassing it, and it was necessary to call on the state troopers to protect the members of the sect. Several Witnesses were charged with riotous conspiracy at Connersville, Indiana, their attorney was mobbed, and he and several other Witnesses who had attended the arraignment were beaten and driven out of town. At Jackson, Mississippi, members of a veterans' organization, led by an individual claiming the rank of major, forcibly removed a number of Witnesses and their trailer homes from the town.

Three instances of such vigilantism led by state or municipal officers caused the Department of Justice to seek indictments against the officers for violation of the Civil Rights Act.[23] Jehovah's Witnesses conventions in July, 1940, were held in twenty cities in some fifteen states. At the urgent request of the Department of Justice, through the United States attorneys, local law enforcement officers were induced to give these conventions adequate protection, so that no violence attended. In this connection, it should be noted also that persecution of the Witnesses is peculiarly a small town and rural community phenomenon, whereas the conventions were held in larger cities.

[23] Sec. 52, T. 18, U.S.C. The respective grand juries refused to indict. Then an information was filed in the worst of the three assaults in which a chief of police and deputy sheriff had forced a group of Jehovah's Witnesses to drink large doses of castor oil and had paraded the victims through the streets of Richwood, West Virginia, tied together with police department rope. The trial of this outrage resulted in a speedy conviction.

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In the two years following the decision, the files of the Department of Justice reflect an uninterrupted record of violence and persecution of the Witnesses. Almost without exception, the flag and the flag salute can be found as the percussion cap that sets off these acts.

Attempts have been made to prosecute school children who had been expelled under "salute or be expelled" regulations on the ground that such children were incorrigible delinquents.[24] The parents have been prosecuted for failure to make their children attend school.[25] In Oklahoma, a group of Witness children, expelled from the Woods county public schools for refusal to salute the flag, were being tutored by an ex-school teacher in her home. She now has been convicted of failing to require the flag salute in her private classes, although she had formulated a different exercise, consisting of a pledge of allegiance to God and country and expressing respect for the flag.[26]

Attempts have been made to enforce ordinances requiring the flag salute as a condition precedent to the right to distribute literature.[27] Mississippi has enacted a statute, allegedly prompted by the stand of the Jehovah's Witnesses against the flag salute, making it a crime to distribute printed matter calculated to encourage disloyalty to the United States.[28] Numerous Witnesses have been indicted under this act because they distributed literature explaining the sect's opposition to the flag salute.[29] The flag has been used in a manner bordering on immorality by mobs which have baited groups of Jehovah's Witnesses throughout the country. Mayoralty courts and justice of peace courts in nearly every state in the Union

[24] *In re* Lefebvre, 20 Atl. 2nd, 185. *In re* Jones, 24 N.Y. Supp. 2nd, 10 (1940).

[25] *In re* La Trecchia, N.J. Sup. Ct. decided June 30, 1942, holding that the parents cannot be fined when the school board expels their children for refusing to salute the flag; West Virginia v. Mercante, C. Ct. Hancock Co., W.Va., June 1, 1942, to the same effect; and see the following pending cases: South Dakota v. Davis and wife, Sup. Ct. S.D.; Arizona v. Davis, Sup. Ct. Ariz.; Partian v. Oklahoma, Okla. Crim. Ct. of Appeals; Pendley v. Oklahoma, Okla. Crim. Ct. of Appeals; Pendley v. Oklahoma, Okla. Crim. Ct. of Appeals. Cf. People v. Sandstrom, 279 N.Y. 523 (1939).

[26] Carter-Mort v. Oklahoma, pending upon appeal, Okla. Crim. Ct. of Appeals.

[27] Kennedy et al. v. City of Moscow, Dist. Ct. Idaho. 39 F. Supp. 26 (1941). Reid et al. v. Brookville et al., Dist. Ct., W.D. Pa., decided May 2, 1941.

[28] H.R. 689 (Mo.) Regular Legislative Session, 1942.

[29] One of these cases, Mississippi v. Mills and Wife, is now pending on appeal in the Miss. Sup. Ct.

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have entertained evidence relative to the refusal of the Witnesses to compromise their religious convictions about the flag as an excuse to convict them on charges of breach of the peace, inciting to riot, violation of peddling ordinances, and other misdemeanors. Few such convictions, however, have been honored on appeal to courts of record.

This ugly picture of the two years following the Gobitis decision is an eloquent argument in support of the minority contention of Mr. Justice Stone. The placing of symbolic exercises on a higher plane than freedom of conscience has made this symbol an instrument of oppression of a religious minority. The flag has been violated by its misuse to deny the very freedoms it is intended to represent—the freedoms which themselves best engender a healthy "cohesive" respect for national institutions. In short, public health, safety, and morals have not been fortified by the compulsory flag salute laws. Indeed, the result has been quite the contrary.

It seems probable that a reversal of that ruling would profoundly enhance respect for the flag.[30] The vigor of constitutional guarantees such as religious freedom, on which respect for flag and country must depend, stems from their ever renewed public recognition and observance. How much more effective an instrument of patriotic education it would be if the flag salute itself were made a practical daily exercise of a fundamental liberty, a liberty which is one of the four great freedoms for which this nation is now fighting!

Perhaps, however, Congress has by-passed the constitutional issue here involved and supplied a statutory solution. On June 22, 1942, Public Law No. 623, codifying the rules and customs regarding the use of and respect due the flag of the United States, became law. Section 7 of that act reads as follows:

"That the pledge of allegiance to the flag, 'I pledge allegiance to the flag of the United States of America and to the Republic for which it stands, one Nation indivisible, with liberty and justice for all,' be rendered by standing with the right hand over the heart; extending the hand, palm upward, toward the flag at the words 'to the flag' and holding this position until the end, when the hand drops to the side. However, civilians will always show full respect to the flag when the pledge is given by merely standing at attention, men removing the headdress. Persons in uniform shall render the military salute."

[30] In the most recent case, the supreme court of Kansas has held that the refusal to salute the flag could not under the Kansas constitution be a ground for expelling a pupil from the Kansas public schools. Kansas v. Smith, decided July 10, 1942.

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This measure was sponsored by the American Legion, and to that organization must go the credit for the statesmanship reflected in the recognition of "respect" as the most universally acceptable and tolerant word to be used in connection with the flag.

Observe that full respect is all that is called for from civilians. Such respect may be shown merely by standing at attention. It is submitted that this law of Congress lays down a federal standard with regard to a matter which is primarily a concern of the national government, and therefore state and local regulations demanding a different standard of performance must give way entirely, or at least be made to conform. Speaking more concretely, a school board order respecting flag salute exercises should not now be permitted to exact more of the pupil with religious scruples against the flag salute than that he should stand at attention while the exercise is being conducted. Full respect will thus be shown as measured by the paramount federal law, and the Jehovah's Witnesses have again and again affirmed that they respect the flag and the principles which it represents. The Department of Justice has been assured that the Witnesses have no objection to standing at attention during the flag salute exercise. Finally, it is worthy of note that in the case next to be discussed three members of the majority of the Court in the Gobitis case have gratuitously acknowledged that the flag salute ruling was wrongly decided.[31]

This brings us to a consideration of the most recent religious freedom opinion of the Supreme Court, which involved variously a book and magazine peddler's licensing ordinance of the city of Opelika, Alabama,[32] a peddler's licensing ordinance of the city of

[31] Mr. Justice Black, Mr. Justice Douglas, and Mr. Justice Murphy joined in the following remarks, Jones v. Opelika, etc., decided June 8, 1942: "The opinion of the Court sanctions a device which in our opinion suppresses or tends to suppress the free exercise of a religion practiced by a minority group. This is but another step in the direction which Minersville School District v. Gobitis, 310 U.S. 586, took against the same religious minority and is a logical extension of the principles upon which that decision rested. Since we joined in the opinion in the Gobitis case, we think this is an appropriate occasion to state that we now believe that it was also wrongly decided. Certainly our democratic form of government functioning under the historic Bill of Rights has a high responsibility to accommodate itself to the religious views of minorities, however unpopular and unorthodox those views may be. The First Amendment does not put the right freely to exercise religion in a subordinate position. We fear, however, that the opinions in this and in the Gobitis case do exactly that."

[32] The amount of the tax was $10 per annum, $5 for transient book agents.

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Fort Smith, Arkansas,[33] and a similar ordinance of the city of Casa Grande, Arizona.[34] Each ordinance exacted a tax of varying amounts as a condition precedent to the right to peddle, and in each case Jehovah's Witnesses had been convicted of offending these ordinances by distributing religious literature, asking and receiving in return a "contribution" usually of a sum fixed as the price of the particular piece of literature.

The Supreme Court, by a five to four majority, ruled that sales of religious literature by the Witnesses were more commercial than religious transactions, and therefore such transactions could properly be subjected to a non-discriminatory privilege tax.

In a dissent filed by Chief Justice Stone, it is pointed out that the license fees were straight taxes and were no part of any reasonable regulatory scheme, that the tax measures were enacted for ordinary business enterprises, while the Witnesses' activity was religious and their money transactions in the nature of solicitation. He concluded that such taxes were a prior restraint upon the defendants' religious activities, and hence offended the religious freedom guarantees of the Fourteenth Amendment:

" . . . It seems fairly obvious that if the present taxes, laid in small communities upon peripatetic religious propagandists, are to be sustained, a way has been found for the effective suppression of speech and press and religion despite constitutional guaranties. The very taxes now before us are better adapted to that end than were the stamp taxes which so successfully curtailed the dissemination of ideas by eighteenth-century newspapers and pamphleteers, and which were a moving cause of the American Revolution. See Collett, *History of the Taxes on Knowledge*, vol. 1, c. 1; May, *Constitutional History of England*, 7th ed., vol. 2, p. 245; Hanson, *Government and the Press, 1695–1763*, pp. 7–14; Morison, *The English Newspaper, 1622–1932*, pp. 83–88; Grosjean v. American Press Co. *supra*, 245–49. Vivid recollections of the effect of those taxes on the freedom of the press survived to inspire the adoption of the First Amendment."

In a separate dissent, Mr. Justice Murphy emphasizes that the purpose of the activity in question was not commercial, but was rather dissemination of religious views. The burden of the tax was, therefore, directly upon freedom of speech, of the press, and of religion.

[33] The amount of the tax was $25 per month, $10 per week, or $2.50 per day.

[34] The amount of the tax was $25 per quarter-year.

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This decision caused an immediate reaction in the press. The majority of the editorials examined expressed dissatisfaction with the result reached.[35] The minority opinions were lauded. While this reaction can be in part attributed to the fear that freedom of the press was unfavorably involved, it nevertheless was heartening to observe that so unpopular a minority sect as Jehovah's Witnesses found so many ready champions to defend its constitutional rights. Some papers gave the opinion straight reporting treatment, some editorialized on the continuation of split opinions in the high court, and a very few sided with the majority.[36]

Too little time has passed for any possible trend occasioned by the license tax decision to be accurately reflected in the Department of Justice files, but already letters have been received requesting copies of the opinion for information as a basis for drafting peddlers' licensing ordinances for the avowed purpose of putting a stop to Jehovah's Witnesses' activities. The thought is present that most communities will at once resort to this expedient. If this occurs, the fears of the dissenting Justices that such legislation is oppressive will appear to be justified.

The following comments are offered in an effort to pin down the problem, which is likely to become lost in rhetorical references to the Constitution. The gist of the majority opinion is found in the following sentence: "But it is because we view these sales as partaking more of commercial than religious or educational transactions that we find the ordinances, as here presented, valid."

This is an assumption which it will be well to consider in the light of the following facts, pro and con: *Pro:* (1) Transfer of books or other literature, and a fixed payment in return, having the ap-

[35] *Age Herald,* Birmingham, Ala., June 11, 1942; *Courier,* Evansville, Ind., June 11, 1942; *Free Press,* Burlington, Vt., June 10, 1942; *Journal-Transcript,* Peoria, Ill., June 11, 1942; *Times-Dispatch,* Richmond, Va., June 12, 1942; *Herald,* Hutchinson, Kan., June 11, 1942; *News and Courier,* Charleston, S. C., June 12, 1942; *Virginian-Pilot,* Norfolk, Va., June 12, 1942; *Enterprise,* Beaumont, Tex., July 5, 1942; *Journal-Times,* Racine, Wis., June 11, 1942; *Times-Herald,* Washington, D. C., June 12, 1942; *State Gazette,* Trenton, N. J., June 11, 1942; *Tribune,* Lewiston, Ida., June 11, 1942; *Democrat,* Johnstown, Pa., June 15, 1942; *Post-Dispatch,* St. Louis, Mo., June 12, 1942; *Journal of Commerce,* Chicago, Ill., June 15, 1942; *Dispatch,* Roswell, N. Mex., June 11, 1942. And see the editorials in *Newsweek,* June 29, 1942, Vol. 19, No. 26, p. 68, and *Time,* June 22, 1942, Vol. 39, No. 25, pp. 55, 56.

[36] *Herald-News,* Passaic, N. J., June 11, 1942. Admittedly, this footnote and footnote 29 represent the sampling method. But observe that on the basis of these samples the ratio is 19 to 1.

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pearance of a sale; (2) Witnesses who devote their full time to their missionary work receive expense money.[37] *Con:* (1) The admitted non-profit nature of the transaction; (2) The undisputed fact that the articles involved were religious and a means of evangelizing; (3) The distributors are professed ministers of their religion and do not profit personally; (4) The funds collected are devoted to the support of the religious movement; (5) The probable fact that the purchaser views his payment of money as nothing more than a contribution.

If this is an honest tabulation, the religious character of the transaction is supported by the numerically preponderant facts. The weight to be assigned to each fact is conjectural, but no part of the money transaction can be divorced from its religious aspect. The distribution of the literature is an exercise of religion, just as is a Sunday sermon. The money received goes to the support of that exercise. By the exaction of a tax, that exercise of religion is burdened, and to the extent that it is, the freedom of religion defined in the First Amendment and protected by the Fourteenth Amendment is inescapably abridged.

The conclusion is that the majority of the Court drew a line between commercial and religious transactions, but did not make sufficiently clear the basis for drawing it. There seems to be reason for arguing that the line should not have been drawn in favor of the commercial taxable aspect when the transaction was fundamentally dissemination of religious beliefs, the distributor being a minister or evangelist without personal gain, and when the money received is directly sustaining of the means of religious expression. Were the distributor or salesman to peddle primarily for personal profit, he might well be taxed for the privilege of distributing even religious tracts. Again, if the articles sold were not religious treatises, though sold for the profit of a religious organization, a tax on the seller would not appear to abridge any exercise of religion. In each such instance, the profit motive, or the non-religious nature of the articles dispensed, would divorce the religious from the commercial aspect of the otherwise equivocal "sales."

Admittedly, the balancing of the conflicting religious and social interests in both the flag salute case and the license tax cases is a delicate and difficult problem. The foregoing discussion has attempted to attack this problem in the light of the nation-wide pic-

[37] Cf. Opinion No. 14, Vol. III, National Headquarters Selective Service System.

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ture which has been peculiarly available to the writers through the files of the Department of Justice. Should these issues again be presented to the Supreme Court, as it seems inevitable they will be, it is hoped that the reflections here expressed will be thrown in the balance.[38]

[38] A motion has been made for a rehearing of Jones v. Opelika, etc., decided June 8, 1942. A petition for *certiorari* has been filed in the Supreme Court in a somewhat similar license tax case arising in the District of Columbia, Busey v. Dist. of Columbia, decided April 15, 1942, in the U. S. Court of Appeals for the District of Columbia.

On October 6, 1942, a three-judge court sitting in the District Court of the United States for the Southern District of West Virginia in the case of Walter Barnette *et al.* v. West Virginia State Board of Education granted an injunction against the State Board prohibiting enforcement of the flag salute requirement in the public schools of West Virginia in cases where school children have religious scruples against participating in the salute. The court felt that the authority of the Gobitis case had been so impaired by the change of heart of three members of the Supreme Court who had joined in the majority opinion that it was no longer a binding precedent. An order permitting the defendant, State Board, to appeal was entered by District Judge Ben Moore October 30, 1942.

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The Federal Revenue Act of 1942.[1] The Revenue Act of 1942 marks a new high in American finance; in fact, it reaches a new high for any country. According to official estimates, which vary somewhat, in a full year of operation the new law will increase federal tax revenues by 7 or 8 billion dollars to 24 or 26 billion dollars. This is about 50 per cent more than would have been received if the existing law had not been changed, and four times as much as the greatest tax measure of World War I. Eight-elevenths of the estimated increase is to come from income taxes on individuals; two-elevenths from taxes on incomes of corporations; and nearly one-eleventh from excises on liquor, tobacco, freight charges, etc. (See Table 4).

The great problem of war finance that was, and still is, before the government is to raise the huge amounts necessary without the excessive borrowing and inflation that usually impede the conduct of war, and which also have a large part in causing and aggravating the extremely serious and prolonged depressions that practically always follow major wars. Adequate and wise financing is necessary to win the war surely and promptly, and thus to minimize the great destruction of life and resources during the conflict and afterwards. After outlining briefly estimates of our war needs and plans for meeting them, we shall give a brief summary of the main provisions of the new revenue act and then a few explanations, comments, and suggestions relative to future developments.

I. THE FISCAL SITUATION—NEEDS AND PLANS

The Pearl Harbor disaster quickened the tempo of war preparation, including plans for financing. In his January, 1940, budget message, the first after the beginning of the holocaust in Europe, President Roosevelt asked for less than 2 billion dollars for national defense; in his message of January, 1941, after the fall of France and most of the Western European countries, he outlined defense expenditures of $6.4 billion for 1941 and $10.8 billion for 1942. But in January, 1942, only thirty days after the Pearl Harbor disaster which had galvanized and unified American public opinion, he called for $50 billion to $60 billion (or more than half of

[1] Those not familiar with the previous course of United States war tax legislation, and particularly with the income and excess profits taxes, might get a better background for the present discussion from "The Revenue Act of 1941," *American Economic Review*, Vol. 31, pp. 809–822 (Dec., 1941), and *The Federal Income Tax* (New York, 1940), by the present authors.

In preparing this article, the authors received valuable data and assistance from the U. S. Treasury Department staff, the Congressional committees, British and Canadian officials, Dr. Fred W. Morrison, the Graduate School of the University of Minnesota, and others, for all of which they wish to express their appreciation.

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the expected national income)[2] to prosecute the war during the next year. October 16, 1942, he said that $76 billion, or three-fifths of the increasing national production (or national income), would be necessary to carry on the war in 1943. Estimates of changes in federal expenditure are shown in Table 1.

TABLE 1.—FEDERAL EXPENDITURES 1932, 1939, AND ESTIMATE FOR 1943[a]
(In millions, for fiscal years)

Activity	*1932*	*1939*	*1943*
War (not including interest)	$ 797	$1,251	$74,000
Interest on the public debt	599	940	1,850
Non-War			
Public Works, Social Security[b]	2,431	5,829	3,360
Administrative departments[c]	707	687	834
TOTAL	$4,534	$8,707	$80,044

[a] Report of the Bureau of the Budget, October 16, 1942, summarized from report in *New York Times*, Oct. 17, 1942.

[b] Includes AAA program, unemployment relief, pensions, etc.

[c] Includes independent offices, legislative establishments, judicial establishments, District of Columbia (U. S. share), Departments of Agriculture, Commerce, Interior, Justice, Labor, State, Treasury, War (Non-Military), and Post Office deficiency.

Secretary of the Treasury Morgenthau, long anxious to avoid excessive borrowing and inflation, had been very insistent, ever since our involvement began to appear imminent, that our war funds should be raised mostly by taxes—not one-fourth by taxes and three-fourths by borrowing as in World War I, but two-thirds by taxing and only one-third by borrowing. Furthermore, he has urged that as much as possible of the borrowing be of a non-inflationary character, that is, from individuals who would pay for their bonds out of current earnings and savings rather than from commercial banks, which pay for bonds, not with money already in circulation, but by making book entries of deposits to the credit of the government. In January, 1942, however, the Secretary of the Treasury realized that the tremendous budget then proposed by the President could not be raised without much larger loans than he had been advocating.

[a]	*1915*	*1920*	*1929*	*1933*	*1939*	*1940*	*1941*	*1942*	*1943*
Cost of living	74	138.3	122.8	93.9	99.6	100.7	110.5	116.9	
National Income	$——	$——	$ 83.3	$39.9	$70.7	$ 76.0	$ 94.7	$114	$120
Public debt	0.9	24.1	16.6	22.2	39.8	42.3	48.4	76.5	

Bureau of Labor Statistics cost of living index, expressed in percentages, is for December of each year, except for July in 1942; the increase from March, 1941, to July, 1942, was 15.5 per cent. National income estimates are in billions of dollars for calendar years. Interest-bearing public debt, in billions of dollars, is as of June 30; the amount for Oct. 17, 1942, was $89.2 billion.

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Public hearings on the new revenue bill were started in the House of Representatives by the Committee on Ways and Means on March 3, 1942. The Secretary of the Treasury requested Congress to provide for new taxes to yield revenue of $7.6 billion more than provided by existing legislation. His recommendations were that rates of the individual income tax be increased to yield $3.2 billion additional and that varying percentages (up to 10 per cent) of surtaxes be collected currently at the source. At that time, he did not advise lowering individual exemptions. Before the House of Representatives passed the measure, however, he came to the conclusion that the income tax base should be broadened in this manner. He proposed increasing corporate excess profits taxes, but not corporate normal and surtaxes; increasing estate and gift taxes, and excises (even doubling the federal gasoline tax); and removing certain inequities and privileges in the law.

After several months of work on the bill, on July 14, 1942, the Ways and Means Committee reported it to the House, which passed it on July 20. The Senate Committee on Finance had the House measure under consideration until October 2, when it reported it to the Senate with 504 amendments, some of them minor, some very important. The Administration was greatly dissatisfied with the House measure because it did not provide the funds which the Treasury had said in March were necessary (not to mention subsequent increases in estimates of needs), because it did nothing about the "inequities" and "privileges" and, also, because it provided for a 5 per cent tax on freight that was considered inflationary, as this would doubtless increase the cost of goods and services generally. The Senate measure was somewhat more acceptable from this point of view, although Treasury estimates of the yield of the Senate bill were less than those of the Senate Finance Committee.

II. SUMMARY OF MAIN PROVISIONS OF THE NEW LAW

(1) *Individual Income Tax.* Among the most important changes in the income tax law are the reductions in the individual exemptions allowed. Henceforth many more taxpayers will file returns and other income taxpayers will pay higher rates on larger amounts. Exemptions were lowered from $1,500 to $1,200 for a married person or head of a household; from $750 to $500 for a single person; and from $400 to $350 for a dependent.

Two provisions grant some slight relief to certain classes: (1) soldiers and sailors in active service at the end of the taxable year may exclude from gross income $250 if single, and $300 if married; (2) any taxpayer may deduct medical expenses if they amount to more than 5 per cent of his net income, but the maximum deduction allowable is $2,500 in case of a husband and wife or head of a family, and $1,250 in case of all other individuals.

Rates of tax are increased on all brackets of income. The normal or flat

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tax was raised from the 4 per cent of the 1941 law to 6 per cent; the first surtax rate, from 6 per cent to 13 per cent. As the surtax applies to the first dollar of taxable income, the lowest rate on taxable net income is 13 per cent, and, where the normal tax is applicable, as it is in most cases, the sum of the normal and surtax rates is 19 per cent or more; and, in addition to this, the "Victory" tax of 5 per cent will apply to "Victory tax net income" in excess of $624 a year, beginning with income of 1943. Under the previous law, the maximum income surtax rate of 77 per cent applied to income in excess of $5,000,000; under the Act of 1942, the maximum surtax rate of 82 per cent applies to income over $200,000. Tax liabilities on representative incomes are shown in Table 2.

TABLE 2.—TAX LIABILITIES OF CERTAIN CLASSES OF CITIZENS UNDER PREVIOUS LAW AND UNDER ACT OF 1942[a]

Single Person:	*Act of 1941*	*Act of 1942*			
Gross Income	*Income Tax*	*Income Tax*	*Victory Tax*	*Post War Credit*	*Total Net Tax*
$ 600	—	$ 5.20	—	—	—
1,000	$ 11.40	70.60	$ 18.80	$ 4.70	$ 84.70
1,500	54.60	153.40	43.80	10.95	186.25
2,000	97.80	236.20	68.80	17.20	287.80
2,500	141.00	319.00	93.80	23.45	389.35
3,000	184.20	407.80	118.80	29.70	496.90
5,000	409.50	793.00	218.80	54.70	957.10
10,000	1,246.50	2,056.00	468.80	117.20	2,407.60
100,000	46,421.50	56,351.00	4,968.80	500.00	60,819.80
1,000,000	655,139.00	766,616.00	43,384.00	500.00	809,995.00
5,000,000	3,523,124.00	3,934,616.00	115,384.00	500.00	4,049,995.00
Married Person—No Dependents:					
600	—	—	—	—	—
1,000	—	—	$ 18.80	$ 7.52	$ 11.28
1,500	—	$ 20.40	43.80	17.52	46.88
2,000	$ 22.80	103.20	68.80	27.52	144.48
2,500	66.00	186.00	93.80	37.52	242.28
3,000	109.20	268.80	118.80	47.52	340.08
5,000	312.00	639.00	218.80	87.52	770.28
10,000	1,079.00	1,826.00	468.80	187.52	2,107.28
100,000	45,919.00	55,784.00	4,968.80	1,000.00	59,782.80
1,000,000	654,554.00	766,000.00	44,000.00	1,000.00	809,000.00
5,000,000	3,522,524.00	3,934,000.00	116,000.00	1,000.00	4,049,000.00

[a] This table is computed on the assumption that net income subject to regular income tax is 90 per cent of gross income, that is, that taxes, contributions, and other deductions average 10 per cent. Credit is taken for 10 per cent earned income. The victory tax is computed on income above $624 and is offset by the amount of credits or refunds shown in credit column. Victory tax on the two highest brackets is adjusted to comply with 90 per cent tax limit.

Provision is made for continuation of the simplified return[3] for those

[3] This form contains a table showing the tax liability on each income up to $3,000 so that a taxpayer need not make complicated computations, but may see his tax liability at a glance. In general, it allows about 6 per cent for deductions.

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having a gross income of $3,000 or less from salaries, wages, dividends, interest, or annuities. This type of return was first authorized in 1941, and has proved of value in simplifying administration for both the taxpayer and the government. The 1942 law restricts somewhat the use of this simplified form. In the previous law, it could be used also for income from rents and royalties.[4]

A radical new departure in the 1942 law is the so-called Victory tax, which starts in a small way the collection-at-the-source feature combined with the compulsory savings plan—features that have been developed somewhat further and somewhat differently in Great Britain and Canada. This tax is 5 per cent of that part of a taxpayer's net annual income, except capital gains and interest on federal obligations, which is in excess of $624; it is in addition to regular income taxes mentioned above. Credits are allowed currently for debt reduction, insurance premium payments, and bond purchases; but such credits may not exceed the limits set for post-war credits. These alternative post-war rebates or credits are 25 per cent of the Victory tax, or $500, whichever is less, for a single person; and 40 per cent of the tax, or $1,000, for a married person or head of a family, plus 2 per cent or $100 for each dependent. These post-war credits are allowable, however, only to the extent that the current tax credits have not exhausted them. Victory and ordinary income taxes combined are not to exceed 90 per cent of net income.

The new law again changes the treatment of capital gains and losses. Prior to 1921, gains and losses from sales of taxpayer's capital assets were treated as ordinary income or loss in computing the income tax. Since then, various differentiations between capital gains and ordinary income have been made from time to time. The Revenue Act of 1939 established three categories and provided that different proportions of profits from sales should be taxed differently, depending upon the length of time assets were held. This plan has been followed in the Act of 1942, but the basic holding periods have been changed. Under the new measure, 100 per cent of profits from sales of securities held for less than six months, and 50 per cent of profits from sales of those held more than six months, must be included for income tax purposes. The amount of deductible capital loss is limited to the extent of the capital gains plus net income, or $1,000, whichever is less; but taxpayers may carry over for five succeeding years any excess of losses over gains.

(2) *Corporation Income, Surtax and Excess Profits Taxes.* Changes in corporation tax rates are shown in Table 3. It should be noted that all corporations are allowed an excess profits tax exemption of $5,000, and

[4] Other restrictions also were imposed. For example, it cannot be used by a nonresident alien, by an individual filing for less than a twelve-month period, or by a married person whose spouse files a return and computes a tax without regard to this small return.

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TABLE 3.—CORPORATION TAXES[a]

	1942 rates	*1941 rates*
I—INCOME TAX:		
(*a*) *Normal Tax:*		
1—Net of $25,000 and under; first $5,000	15%	15%
$5,000 to $20,000	17	17
$20,000 to $25,000	19	19
2—Net over $25,000; flat rate	24	24
(*b*) *Surtax:*		
On $25,000 net and less	10	—
If net is over $25,000	16	—
First $25,000 net	—	6
On remaining net	—	7
II—EXCESS PROFITS TAX:		
(*a*) *Exemptions:*		
1—Invested capital method:		
Flat exemption for all companies	$5,000	$5,000
On first $5 million of capital	8%	8%
On next $5 million of capital	7	7
On next $190 million of capital	6	7
On the remainder of capital	5	7
2—Average earnings method:		
Flat exemption for all companies	$5,000	$5,000
Plus credit on 1936–39 average	95%	95%
(*b*) *Rates:*		
On all excess profits	90	—
On the first $20,000	—	35
On next $30,000	—	40
On next $50,000	—	45
On next $150,000	—	50
On next $250,000	—	55
All over $500,000	—	60

[a] From George B. Bryant, Jr., "The New Tax Law," *Barron's*, Oct. 26, 1942.

that there is a tax limitation of 80 per cent of surtax net income, after refunds. Reduction of the percentages of invested capital credit for larger corporations exercising this option will result in higher taxes on numerous corporations with large capitalization. For corporations using the pre-war average-earnings base, some relief is provided. For example, corporations using the average-earnings method of computing excess profits taxes may substitute 75 per cent of the average earnings of the best three years in the base period 1936 to 1939 for the worst year in this period if the worst year's earnings were less than 75 per cent of the average of the other three years.

Much discussion was aroused by the controversy over whether excess profits from war contracts should be recouped by the use of the excess profits tax or by renegotiation of contracts, or by both. Both methods

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have serious weaknesses and are liable to great abuses. Under previous laws, renegotiations might occur as late as three years after the war. The 1942 law limits such action to one renegotiation except in cases of fraud, and to the period within one year after the close of the fiscal year within which the contract is completed.

The Senate conferees insisted on retaining the corporation capital stock tax and the declared-value excess profits tax, both of which the House had proposed to repeal; but corporations are exempt from the declared-value excess profits tax if their profits do not exceed 10 per cent of the declared value. If the profits do exceed this percentage, they are subject to a tax of 6.6 per cent on the amount over 10 per cent and not over 15 per cent of declared value, and to a tax of 13.2 per cent if profits are over 15 per cent. The Act of 1942 allows corporations to make declarations of "declared value" annually.

(3) *Estate, Gift, and Excise Taxes.* The new law does not revise the rates of estate or gift taxes, but it changes the $40,000 exemption plus the $40,000 life insurance credit of the previous law to a maximum exemption of $60,000 for either or both combined.

Examples of increases in the more important excises are: from $4 to $6 per gallon on distilled spirits; from $6 to $7 per barrel on malt liquors; from $7.80 to $8.40 per thousand on cigarettes. Freight and express charges are taxed 3 per cent, but the transportation of coal is taxed 4 cents a ton. Taxes on telephone and telegraph services are increased; the rates vary, but generally the subscriber's telephone bills will be taxed 10 per cent and toll charges in excess of 24 cents will be taxed 20 per cent.

(4) *Effective Dates.* The President signed the Act October 21, 1942, thus permitting taxes on excises to go into effect November 1. Amendments to the individual and corporation income tax are applicable generally to taxable years beginning after December 31, 1941. Changes in the estate tax are applicable to estates of those who die after the date of enactment of the law; but the gift tax amendments are effective with respect to gifts made in 1943 and succeeding calendar years. The Victory tax is applicable to income of 1943 and subsequent calendar years.

III. COMMENTS

The new tax law continues not only the trend of levying higher and higher taxes, but also the trend of doing this in more and more complicated language. Involved sentences, phrases, and clauses, and endless cross references to other sections of this law and also to various sections of the Code, are very trying to inexpert readers and taxpayers who try to decipher the law; but they should furnish unlimited and unending employment to lawyers, accountants, and courts. It is doubtless true, as one drafter said, that a tax law of this magnitude cannot be both simple and

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TABLE 4.—ESTIMATES OF REVENUE YIELDS UNDER FEDERAL REVENUE ACTS AS AMENDED BY THE ACT OF 1942
(In millions of dollars)

	Estimated Yield 1941 law[a]	*Estimated Additional Yield 1942 law*[b]	*Total*
Income tax			
Corporation			
Income tax (current)	$ 3,941.9	$ 8.1	$ 3,950.0
Excess profits	3,597.7	1,901.0	5,498.7
Declared value excess profits	107.5	−58.5	49.0
Less post-war credit	—	−549.9	−549.9
Total Corporation (net)	$ 7,647.1	$1,300.7	$ 8,947.8
Individual			
Income	5,044.8	3,010.7	8,055.5
Victory (gross)	—	3,087.6	3,087.6
Less post-war credit	—	−1,132.3	−1,132.3
Victory (net)	—	1,955.3	1,955.3
Total Individual (net)	$ 5,044.8	$4,966.0	$10,010.8
Back taxes	404.0	—	404.0
Total income and profits	13,095.9	6,266.7	19,362.6
Miscellaneous internal revenue			
Capital stock tax	290	−51.5	238.5
Estate and gift taxes	530.7	13.0	543.7
Liquor taxes	1,169.1	319.8	1,488.9
Tobacco taxes	838.9	62.0	900.9
Manufacturers excise	407.9	9.3	417.2
Retailers excise	128.3	—	128.3
Miscellaneous excises	572.3	262.5	834.8
Total Miscellaneous	3,937.3	615.1	4,552.4
Total	$17,033.2	$6,881.8	$23,915.0

[a] Seventy-seventh Cong., 2nd Sess., *Hearings before Senate Finance Committee on HR 7378*, 1:60.

[b] Treas. Dept., Div. of Research and Statistics, Oct. 17, 1942.

equitable, and it may be that the public should grin and bear the complications for the sake of the equity achieved. Yet it would appear that something practical could be done to lessen the ever-growing complexity.

The impact of this tremendous war tax burden will be reflected in

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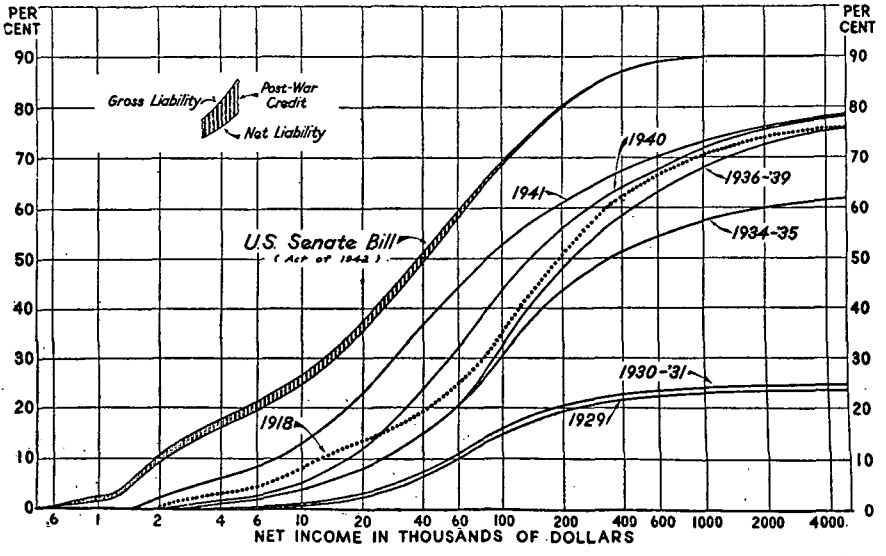
lowered standards of living for many. It will have serious repercussions also on the states, whose fiscal difficulties are already serious because of the severe financial strains on state taxpayers occasioned by the extraordinary federal taxes and the disruption of business caused by the war, as well as because of reduced receipts from gasoline taxes, motor vehicle registration fees, and other important sources of state and local revenues. But if the hardships are necessary to win the war and the taxes are the best and most practical available, American citizens will probably not protest overmuch.

FIGURE 1. INDIVIDUAL INCOME TAX UNDER ACTS OF 1942 AND SELECTED EARLIER ACTS.
Effective Rates for Married Person without Dependents.



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(1) *Individual Rates and Exemptions.* Rates and exemptions have been summarized above, and "effective rates"[5] on individual income in the Act of 1942 are compared with those of previous federal revenue acts, and also with current rates of Canada and the United Kingdom, in Figures 1 and 2. By calling such a large percentage of the rate increases "surtaxes," the

[5] See Table 2. The "effective" rate on any individual's net income is the percentage arrived at by dividing total tax liability by total net income before subtracting exemptions and credits from net income. The term "effective" rate, in contrast to the bracket rates, has been used more and more by the Treasury Department and the government agencies in recent years, probably partly because it is more "realistic" in some respects and partly because it does not stress the high maximum rates: That is, these high new taxes would appear still higher to most laymen if the bracket rates were referred to as much as formerly, the tendency of taxpayers being to focus attention on maximum bracket rates.

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government is circumventing the earlier legal provisions which prevented the imposition of "normal" taxes on the interest from certain government securities. This affects mostly the large holders of such bonds, that is, banks, insurance companies, trust funds, and owners of equities therein. Such taxpayers, as well as state and local governments, would have been affected still more if the tax exemption of state and local government securities had been abolished as recommended and urged by the Administration.

The lowered individual exemptions not only increase the number of taxpayers subject to the income tax, but they also push more of the income of former and larger taxpayers into the higher brackets. That is, they will increase revenue receipts from the larger taxpayers by much larger amounts than from the greater number of new small taxpayers, to say nothing of the burden and expense that will be put upon the Bureau of Internal Revenue in collecting small amounts from millions of newcomers.[6] But this broadening of the base is an experiment worth trying in spite of its disadvantages, particularly if a larger measure of current collection at the source is adopted in order to reduce tax delinquency and also to prevent or lessen inflation. After a few years of experience, we shall have more of a basis for deciding whether the new provisions should be continued, amended, or repealed.

The "Victory" tax is a modified net income tax, but with a general specific exemption to ease the burden, particularly on the poor, and with credits designed to encourage all generally non-inflationary expenditures. This tax will serve also parts of the purposes of those urging: (1) current collection to prevent inflation and tax delinquency, (2) collection of a larger proportion of small incomes which have been increased more or less because of the war and which, in their totality, include a large part of the increased national income that is most likely to be spent for commodities in which inflation may prove most serious.

(2) *Corporation Taxes.* The corporation taxes under the new law are higher than ever, but much lower than those advocated by the Treasury

[6] INCOME TAX RETURNS FILED IN CALENDAR YEARS FOR INCOME OF PRIOR YEAR[a]

	1940	*1941*	*1942*	*1943 est.*	*1944 est.*
Total filed....	7,715,660	14,778,159	26,369,044[b]	35,000,000	45,800,000
Non-taxable..	3,673,902	7,273,464	8,488,395	8,000,000	3,000,000

[a] From press releases of the U. S. Treasury, Oct. 2, 22, 1942.

[b] Of these, 10,369,708 were filed on the special simplified optional return (Form 1040A) designed for those with incomes of $3,000 or less.

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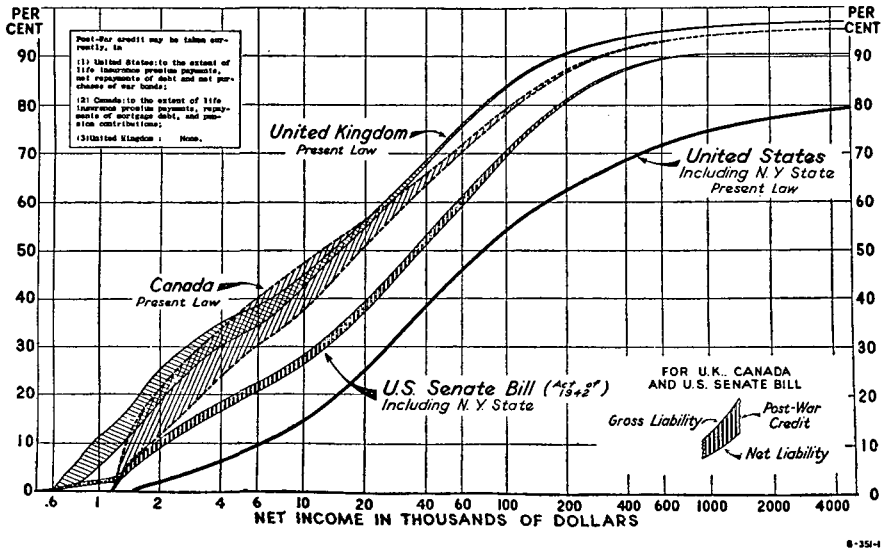
and appreciably lower than those in the bill passed by the House of Representatives. The Senate Finance Committee appeared especially concerned that taxes on business should be equitable and should not unnecessarily impede the war effort or kill the goose that lays the golden eggs. It gave special relief to bankrupt railroads, to the hard pressed utilities, and to corporations trading with countries of the Western Hemisphere. The post-war refunds and the over-all 80 per cent limitation

FIGURE. 2. INDIVIDUAL INCOME TAX UNITED STATES, UNITED KINGDOM, AND CANADA. Effective Rates for Married Person without Dependents.



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Division of Tax Research

mentioned above were designed not only to give relief, but also to check extravagance, graft, and inflation[7] caused by 100 per cent, or near-100 per cent taxes, and also to enable business to make desirable post-war adjustments, to give adequate employment to labor, and to prevent, or at least mitigate, post-war depressions. Some consider that the Senate was altogether too tender with business, especially with corporations known or thought to be prospering.

(3) *Comparisons with British and Canadian Taxes.* It has been pointed

[7] Cost-plus war contracts appear to be even worse incentives to these abuses than high excess profits taxes. An eminent British economist now in his government's service has stated that Great Britain would reduce waste, increase production, and speed up the war effort greatly by reducing her excess profits tax from 100 per cent to 60 per cent; even 80 per cent is too high, he says, in view of war hazards and disruptions.

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out repeatedly that although our taxes are burdensome, they are less so than British and Canadian taxes. This is doubtless true in general, but accurate comparisons are difficult to make because incomes and other economic factors, as well as definitions and other provisions of the several tax laws, are so different. A few examples will indicate why comparisons are likely to be misleading. Great Britain has one less layer of government than the United States; and property taxes are much less important there than here. Corporations as such are not subject to the ordinary income tax, but pay such taxes for their stockholders, who are not again subject to this tax when dividends are distributed to them. Thus the British do not discriminate between corporations and partnerships (and individuals) as do our lawmakers.[8] For the most part, capital gains are not subject to the ordinary British income tax. Excess profits tax provisions are different, but not so different perhaps since the enactment of our new revenue act. National income and average individual income are larger in the United States than in Great Britain. It is obvious that these and many other differences are likely to make most lay comparisons rather misleading, but it seems safe to say that the Canadians and British are bearing rather heavy tax burdens.

(4) *Proposals Not Adopted.* The rejection of some proposals probably throws as much light on present and future tax policy as does the approval of some features already discussed. The Treasury's proposal for a compulsory joint return by husband and wife was again strongly opposed by the representatives of the community-property states and some others. Though rejected by Congress, the President's proposal to put an upper limit of $25,000, after tax, on all salaries has since been decreed under his extraordinary war powers. The Secretary of the Treasury apparently thought it futile to press very hard this time for elimination of the prewar average earnings credit option for excess profits taxes. Nor was he successful in securing repeal of the extraordinary depletion allowances granted mining companies, or in persuading Congress to eliminate the tax exemption long accorded interest from state and local government securities.

The Senate Finance Committee turned down the Treasury's spendings tax proposal[9] promptly and almost bluntly, although compulsory-loan

[8] But numerous large-income stockholders in the United States, some of them corporation directors, have avoided high surtaxes on individual incomes when corporations have failed to distribute earnings in dividends to stockholders. This practice is encouraged by disparity of rates on corporations and individuals.

[9] In essentials, the spendings tax as advocated by the Treasury was very similar to the "Victory" tax, but quantitatively much larger. It was really not greatly different in general effects from an income tax except that it exempted savings (non-inflationary). The tax was in two parts: (1) a 10 per cent tax to be repaid later, based on spending in excess of $2,000; (2) a non-returnable tax graduated from 10

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and collection-at-the-source features entered the tax tent by the camel's-nose method in the form of the "Victory" tax. On the other hand, the general sales tax, which lurked in the background, and which numerous congressmen, senators, business men, and others want, but which the Administration has long opposed, was not given formal consideration on the floor of either house.

IV. CONCLUSION

In conclusion, it may be asked: Does the Revenue Act of 1942 meet the tax requirements of the situation which faces the United States? Probably as nearly so as Congress thought was economically and politically feasible; and Congressmen thought they were in a very tight place just before the elections. But with $75 or $80 billion of expenditures for war this year, and only $24 or $26 billion of taxes and $12 billion or less of non-inflationary borrowing from savings (voluntary purchase of war bonds), there is still left over $40 billion to be borrowed—probably mostly from commercial banks—the most inflationary of all important sources of war finance. With more wage receipts and other purchasing power in the hands of the public than ever before, and with supplies of civilian goods decreasing, the danger of bidding up prices is very grave. With the government throwing $40, or even $30, billion more into circulation by causing the banks to pay for bonds with book entry deposits, the pressure toward inflation becomes tremendous, and it is a question how successfully the tide can be held back by priorities, rationing, wage and price controls, and the other forms of regulation that have been started—we hope not entirely too late and too little.

At this writing, it appears that the Administration is likely to call upon Congress to begin anew the annual struggle over taxes soon after the President presents his annual budget message in January. It appears that one of the struggles will be over a general sales tax versus a spendings tax, with the odds in favor of the former despite the solid merits (and serious administrative difficulties) of the latter. Compulsory loans and collection-at-the-source features should, and probably will, be pushed farther next year, and some of the income tax rates will probably be raised again if war needs continue to grow, as they likely will until the war ends.[10]

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per cent on spending in excess of $2,000 up to 75 per cent on that in excess of $10,000. This highly progressive second part of the Treasury's spending tax was perhaps its most distinctive and controversial feature. It is not a necessary part of a spendings tax, but it is what differentiates the Treasury's proposed spendings tax most distinctly and vitally from the Victory tax of the Act of 1942 and also from most sales tax proposals. It is therefore the crucial issue in controversy between opposing proponents of sales and spendings taxes.

[10] While this article was in press it was reported from Washington that the chairmen of the Senate Finance and the House Ways and Means Committees have stated that taxes on incomes of individuals and corporations are already so high that they

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Most of us probably flinch at much heavier taxation. But we may rest assured that the government can and will secure enough purchasing power to finance the war—that is, to purchase the supplies, equip the armed forces, and secure all the other physical means available to win the war. If it can secure enough funds through taxes and non-inflationary loans out of savings, we may avoid serious inflation. But whenever a government faces the danger of losing a major war, it does not stop at printing money or requiring the banks to do the equivalent, if this is necessary to get the war supplies it must have. It is not a question of whether or not we shall pay for the war, but whether the war and the peace are likely to be more successful, and whether the costs of both are likely to be distributed more satisfactorily, if we finance the war by one method or by another. History indicates the answer, though we have the chance to make future history better than the past if we are sufficiently wise and willing, and have not waited until too late.

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University of Minnesota.

The Case of the Nazi Saboteurs. At four o'clock on the morning of June 13, 1942, four men, in the fatigue uniforms of the German Marine Infantry, were landed in a rubber boat by two German sailors on the beach at Amagansett near the tip of Long Island, 125 miles east of New York City. They changed to civilian dress and then buried in the sand their uniforms and a supply of explosives, incendiaries, fuses, detonators, timing devices, and acids. They carried with them some $90,000 in American currency and had an elaborate list of American factories, railroad centers, bridges, power plants, water supply systems, and the like. They were accosted by an unarmed Coast Guard patrol. Alleging that they were fishermen, the four men sought the silence of the patrol first by threats to kill him and then by a bribe. He accepted $260, promptly reported the incident, and a squad of Coast Guardsmen shortly discovered the buried articles. A submarine was seen and heard off shore. The four men went to New York City.

On June 17, four other men landed under similar circumstances at Ponte Vedra Beach, near Jacksonville, Florida. They also buried explosives, incendiaries, fuses, and timing devices. They proceeded without discovery to Jacksonville, and from there some went to Chicago.

On June 27, Mr. J. Edgar Hoover announced the arrest in New York

should not be raised again in 1943, and that probably other taxes and compulsory loans will have to be considered. It was suggested also that the "Ruml plan" (or something like it) for skipping or postponing federal taxes on 1942 incomes and higher "pay-as-you-earn" taxes on incomes of 1943 and later years will probably be considered.

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and Chicago of the eight men, all in civilian clothing, and their detention by the F.B.I. This was the first news of the affair.

All of the eight men were born in Germany, all had lived for some time in the United States, and all had returned to Germany between 1933 and 1941. In age, they ranged from twenty-two to thirty-nine. Six (Quirin, Neubauer, Heinck, Thiel, Kerling, Dasch) were German citizens. Burger had been naturalized in the United States, but had forfeited his American citizenship by induction into the German Army in 1941. Haupt claimed American citizenship based on the naturalization of his parents when he was five years old. He denied any acts or conduct which would forfeit his American citizenship.

The eight men admitted that they had been trained in a special school for sabotage near Berlin to effect the destruction of factories, power plants, railway and communication systems, bridges, and other key war facilities. They were trained to use secret writing in order to communicate with Germany and with each other. They had instructions from an officer of the German High Command to destroy war industries and facilities in this country. They, or in some cases their families in Germany, were to be paid a salary for their services. From the two groups the F.B.I. recovered about $175,000—American currency which was to be used for expenses and for bribes. The men stated that they had been ordered to wear their German uniforms when landing. They were brought to this country in two groups by German submarines.

On July 2, President Roosevelt issued two proclamations. The first denied to enemies who enter the United States to commit sabotage, espionage, or other hostile acts any right of access to the courts of the United States, and directed that such persons be tried by military tribunals in accordance with the laws of war. The second created a Military Commission of eight Army officers, headed by Major General Frank R. McCoy, to try the eight saboteurs (mentioned by name), ordered the Attorney General and the Judge Advocate General to prosecute them, and designated Colonel Cassius M. Dowell and Colonel Kenneth Royall as counsel to defend them. The Commission was authorized to make its own rules, to receive evidence which would have "probative value to a reasonable man," to convict or sentence by a two-thirds vote, and to transmit its findings to the President for final action.

The prisoners were turned over to the military authorities by the Attorney General and on July 3 the Government filed four charges against them. The first was a broad charge of violating the law of war by passing through our lines in civilian dress in order to commit sabotage, espionage, and other hostile acts; there were two charges of attempted "spying" and "relieving, corresponding with or aiding the enemy" under Articles of War 81 and 82; and a final charge of conspiracy to do all these things.

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Trial before the Military Commission began on July 8 in the Department of Justice Building in Washington behind an impenetrable veil of secrecy. The proceeding was thirty-two hours old before any public knowledge of it was released, and General McCoy wished the entire trial to be completed without any publicity. Mr. Elmer Davis, newly created Director of the Office of War Information, made an issue of this and after a conference at the White House it was agreed that daily "communiqués" should be released to the press by General McCoy. These proved, however, pretty sterile. The entire record of the trial, containing as it does important military information, has been impounded for the duration of the war. At the outset, the defense counsel challenged the constitutionality of the President's Proclamation and the jurisdiction of the Military Commission, and stated that they waived no constitutional rights of the accused by proceeding. All of the defendants and numerous witnesses testified. Dasch and Burger aided the government, the former to such an extent that special counsel was appointed to look after his interests. The trial proceeded until July 27, when the defense rested its case.

The country was startled on July 27 by an announcement that the Supreme Court of the United States would meet in special session on July 29 to allow the submission of petitions for writs of *habeas corpus* in behalf of the prisoners. The ensuing proceedings proved as confusing on the procedural side as they were dramatic from other points of view. On July 28, defense counsel asked the District Court for the District of Columbia for leave to file petitions for *habeas corpus* in that court. These applications were denied that evening. When the Supreme Court met on July 29, two applications were made to it: first, for permission to file a petition for *habeas corpus* in the Supreme Court; second, a petition for *certiorari* to review the adverse order of the District Court of the preceding day. The first application called for an exercise of the Court's original jurisdiction; the second called for direct review on *certiorari* of the District Court's order, thereby by-passing the Circuit Court of Appeals for the District of Columbia. Lawyers and justices alike seemed doubtful about the Court's jurisdiction to proceed in either of these two ways. The Supreme Court finally allowed argument to proceed on the constitutional issues raised by the petition for *habeas corpus,* while defense counsel hurried to plug any gaps in the Court's jurisdiction by perfecting an appeal from the District Court to the Circuit Court of Appeals for the District and filing with the Supreme Court a petition for *certiorari* to the Circuit Court of Appeals before judgment. This was actually accomplished only a few minutes before the Supreme Court met on July 31 to announce its decision. By stipulation of counsel, the record, briefs, and arguments in the *habeas corpus* proceedings were treated as the record, briefs, and arguments upon the writs of *certiorari* to the Circuit Court of Appeals. Thus

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at the very last minute the Supreme Court granted *certiorari* to the Circuit Court of Appeals before that court had rendered judgment, decided on the merits that the orders of the District Court denying permission to petition for *habeas corpus* be affirmed, and denied the petitioners application for leave to file petitions for *habeas corpus* in the Supreme Court. The Court thus disposed of the case without deciding whether it has original jurisdiction to grant *habeas corpus*.

The proceedings in the Supreme Court occupied two days. Mr. Justice Murphy, on temporary leave in the Army, did not sit. The case involved only seven of the eight prisoners. Dasch, who had substantially aided the prosecution, did not join in the petition for *habeas corpus*. On July 31, the Court handed down through the Chief Justice a brief *per curiam* opinion. It stated in a few sentences that the accused were being tried on charges which the President could validly order tried before a military commission, that the Military Commission was lawfully constituted, and that no cause had been shown for discharge by *habeas corpus*. The orders of the District Court were affirmed and motions for leave to file petitions for *habeas corpus* were denied. The Chief Justice stated that a full opinion would be prepared "which necessarily will require a considerable period of time for its preparation and which, when prepared, will be filed with the Clerk." This opinion was filed on October 29, 1942, under the title *Ex parte* Quirin *et al.* As soon as the Court had handed down its decision on July 31 the Military Commission resumed its sessions. On August 3, it sent its verdict, together with the complete record, to the President. On August 8, the President announced that six of the prisoners had been electrocuted, one, Burger, sentenced to life imprisonment, and one, Dasch, sentenced to thirty years.

The Supreme Court's problem in this case was not complicated by any dispute over the facts. These facts, as set out above, were agreed upon by the government and defense counsel. The defendants did not deny them, but claimed that they had done these things without unlawful or hostile intent solely as a means of escaping from Germany. They emphasized that they had committed no unlawful overt acts and had perfected no plans. The truth or falsity of these statements obviously had nothing to do with the question of which authority, military or civil, was to try the prisoners. There were, in short, no disputed "jurisdictional" facts.

The twenty-two page opinion of Chief Justice Stone established three main points, thereby rejecting the three major contentions of the defendants. The first point established was that the Military Commission had jurisdiction to try the charges against the defendants. The supporting arguments fell into three divisions. (1) The President had power to establish the Commission. The Constitution grants war powers. It authorizes Congress to declare war and gives to the President, both as chief executive

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and as commander-in-chief full authority to wage the war which Congress declares and to execute all laws passed for the conduct of the armed forces. By the Articles of War, Congress explicitly provided for trial by military commissions of offenses against the law of war not customarily tried by courts martial. The law of war has been recognized and applied by American courts from the beginning. The President in this case has invoked the law of war as commander-in-chief. "By his order creating the present Commission he has undertaken to exercise the authority conferred upon him by Congress, and also such authority as the Constitution itself gives the commander-in-chief, to direct the performance of those functions which may constitutionally be performed by the military arm of the nation in time of war." But it is unnecessary to decide "to what extent the President as commander-in-chief has constitutional power to create military commissions without the support of Congressional legislation," since Congress has clearly authorized the trial of offenses against the law of war before such commissions. (2) The offenses charged against the defendants *are* offenses against the law of war. The law of war does not have to be codified in the form of statutes. Congress had its choice either of crystallizing "in permanent form and in minute detail every offense against the law of war" or of adopting the system of common law of war applied over many years by military tribunals. It chose the latter course. The law of war has always distinguished between armed forces and peaceful populations of belligerent nations, and between lawful and unlawful combatants. Lawful combatants are liable to capture and detention as prisoners of war. Unlawful combatants are also thus liable, but in addition are subject "to trial and punishment by military tribunals for acts which render their belligerency unlawful." These distinctions were recognized before the adoption of the Constitution and during the Mexican and Civil Wars. By the long-established practice of this government, "those who during time of war pass surreptitiously from enemy territory into our own, discarding their uniforms upon entry, for the commission of hostile acts involving destruction of life or property, have the status of unlawful combatants punishable as such by military commission." This is precisely what these defendants are charged with doing in the first charge brought against them. It is not necessary that the hostile acts should be committed against our armed forces. "Modern warfare is directed at the destruction of enemy war supplies and the implements for their production and transportation quite as much as at the armed forces." Nor does it make any difference that the prisoners *did* nothing. "The offense was complete when with that purpose they entered—or, having so entered, they remained upon—our territory in time of war without uniform or other appropriate means of identification." (3) The Commission had jurisdiction regardless of the alleged citizenship of any of the de-

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fendants. Offenses against the law of war are not the exclusive crimes of aliens. They may be committed by an American citizen. Special argument on behalf of Haupt was based on his American citizenship acquired at the age of five through the naturalization of his father. The fact of citizenship is held to be entirely irrelevant. The Court declared that a citizen could by his acts become an enemy belligerent, and that "citizenship does not relieve him from the consequences of a belligerency which is unlawful because in violation of the law of war."

The second main point established by the Court is that the constitutional guarantees of grand jury indictment and jury trial do not apply to the defendants' trial before a military tribunal for offenses against the law of war. The argument here is largely historical. Jury trial was no part of the procedure of a military tribunal at common law. The clauses of the Constitution requiring jury trial were not intended to make it such. These clauses were designed to protect trial by jury as then known and applied, not to apply it to new situations. The Court has steadily followed this principle, as is shown in the cases holding jury trial not necessary in the trial of petty offenses and criminal contempts because the common law had not required it in these cases. The Fifth Amendment, which guarantees grand jury indictment, expressly excepts from its operation "cases arising in the land or naval forces," and these cases are held to be excepted by implication from the jury trial guarantee of the Sixth Amendment. Defendants had argued that the specific exception from the grand jury and jury trial requirements of all "cases arising in the land and naval forces" meant that there could be no other exception. This view, said Chief Justice Stone, "misconceives both the scope of the Amendment and the purpose of the exception." "Cases arising in the land and naval forces" are cases involving offenses of whatever nature committed by our soldiers and sailors, offenses which, if committed by civilians would in most cases be triable by jury. These cases are tried by courts martial, not because of the nature of the offenses, but because of the membership in our armed forces of those who commit them. The exception has no bearing on the applicability or inapplicability of the jury trial requirement to offenses against the law of war. "We cannot say that Congress in preparing the Fifth and Sixth Amendments intended to extend trial by jury to the cases of aliens or citizen offenders against the law of war otherwise triable by military commission, while withholding it from members of our own armed forces charged with infractions of the Articles of War punishable by death."

The Court then turned to the Milligan case and disposed of in it thirty lines. The Milligan case had been the chief bulwark of the defense. Attorney General Biddle, in oral argument, had assured the Court: "You could decide this case without touching a hair of the Milligan case, but

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if it were not for the Milligan case, this case would not be here." He was undoubtedly correct. For seventy-five years, the Milligan case has been cited as protecting the right of the civilian to a jury trial in time of war except in the immediate theater of military action. It will be recalled that during the Civil War Milligan was charged with seditious and treasonable activities in Indiana where he lived, was arrested by the Union military authorities, and was tried for his crimes by a military commission set up for the purpose by President Lincoln without the sanction of any statute. He was convicted and sentenced to be hanged. He took his case to the Supreme Court in an attack upon the constitutionality of his trial. In 1866, the Supreme Court held that he had been unconstitutionally denied a jury trial in a civil court and set him free. Nine justices held that his trial before the military commission was invalid since the Congressional legislation then in force forbade a military trial of a civilian resident. "That body [Congress]" said Chief Justice Chase, "did not see fit to authorize trials by military commission, but by the strongest implication prohibited them." Five members of the Court, speaking through Mr. Justice Davis, went further and declared that Congress itself could not validly authorize the trial of civilian residents by military commissions except in the actual areas in which existing military operations had resulted in the closing of the civil courts. Four justices disagreed with this sweeping rule. The Government's position was that the doctrine of the Milligan case, properly construed, is inapplicable to the Nazi saboteurs, but that if it should be held applicable, then it ought to be overruled.

The Court followed the first and easier course and declared that "the Court's opinion [in the Milligan case] is inapplicable to the case presented by the present record." It mentioned the fact that Milligan was for twenty years a citizen and resident of Indiana, that he had never been a resident of a rebellious state, that he was not an enemy belligerent and had not had contact with armed enemy forces, and was for these reasons not subject to the law of war. It concluded: "We construe the Court's statement as to the inapplicability of the law of war to Milligan's case as having particular reference to the facts before it."

Having satisfied itself that the Government's first charge against the defendants alleging offenses against the law of war was "not merely colorable or without foundation," the Court declined to examine the other three charges.

The third point established by the Court was that the President's order setting up the Military Commission and determining its procedure was valid, and that the Commission itself had followed lawful procedure. The brief of defense counsel on this point had been long and detailed and had charged that the President's order violated specific articles of war enacted by Congress, and that the Commission's procedure had also violated

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statutory requirements. The Court did not consider these issues on their merits. Chief Justice Stone stated that the Court was unanimous in holding that no valid claim for *habeas corpus* could be based on the provisions of the Articles of War, but that the Court was evenly divided on the grounds for this decision. Four justices "are of opinion that Congress did not intend the Articles of War to govern a Presidential military commission convened for the determination of questions relating to admitted enemy invaders." The other four justices took the view that "the particular Articles in question, rightly construed, do not foreclose the procedure prescribed by the President or shown to have been employed by the Commission." In short, the Articles of War either did not govern the President in setting up the Commission, or, if they did govern him, he had not violated them. This concluded the Court's opinion.

The outcome of the case and the decision of the Supreme Court met with general approval. There was, however, some criticism of the Court for taking the case at all and for dealing so thoroughly with the constitutional issues raised. Even some of our liberals explained that while we ought, of course, to be scrupulous to administer impartial justice according to our traditional American rule of law, we ought not in the midst of a total war to waste time, money, and manpower by this ludicrous judicial ritual in the case of a group of enemy criminals who should have been shot at sunrise without more ado. I believe this view fails to take stock of several significant things about the Court's handling of the case and about the principles embodied in the opinion. These merit brief comment.

In the first place, the prisoners did get through to the Supreme Court and have their questions answered by that tribunal. That, in itself, is an important fact. The President's Proclamation had specifically denied the prisoners access to the civil courts. The position of the Attorney General was that the President could lawfully have ordered the prisoners shot as soon as they were arrested, that trial before the Military Commission was given as an act of grace and not of necessity, and that as belligerents the prisoners had no right of access to any Court. But when the special session of the Supreme Court opened, Chief Justice Stone asked Mr. Biddle: "Does the Attorney General challenge the jurisdiction of the Court?," and Mr. Biddle replied: "I do not." Chief Justice Stone touched on this general point in his opinion. He referred to the Government's contention that because they were enemy aliens, and because of the President's proclamation, no court could give the prisoners a hearing, and said: "But there is certainly nothing in the Proclamation to preclude access to the courts for determining its applicability to the particular case. And neither the Proclamation nor the fact that they are enemy aliens forecloses consideration by the courts of petitioners' contentions that the Constitution and laws of the United States constitutionally enacted forbid their trial by military

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commission." There is little in the history of this case to encourage unlawful belligerents arrested in this country to seek access to the civil courts. But what the Court did and held appears to boil down to this: the Court will look at the question of the detention of anybody under circumstances so unusual or suspicious as to raise the question whether he may possibly be entitled to a civil trial. It is an important protection to civil liberty that the Court, in its discretion, is willing to take this initial look. It may decide to look no further, or, as in this case, it may consider the prisoner's contention on its merits. It is important and gratifying that the Court actually took the case.

It is interesting, in the second place, that the facts essential to the jurisdiction of the Military Commission, according to the view announced by the Court, were not in dispute. There was no controversy over what the prisoners had actually done. The case, therefore, leaves more or less open the important question of how to proceed should these "jurisdictional" facts be disputed. Let us assume the arrest in the interior of the country of citizens or aliens charged by military authorities with acts of sabotage or other hostile acts, and the holding of these persons for trial by military commission in the face of their denial of misconduct and of confusing evidence as to what actually occurred. Here the jurisdiction of the Military Commission would appear to depend upon the truth of hotly disputed charges. Is the commission to be allowed to assume the existence of the facts necessary to its own jurisdiction? If so, there would appear to exist the possibility of the arbitrary denial of constitutional rights. While this problem did not arise in the case of the Nazi saboteurs, the Court's opinion contains one phrase which indicates that Chief Justice Stone was aware of the sticky problem which he was avoiding. In declaring that the Government's first charge against the prisoners stated an offense against the law of war, he went on to say: " . . . and the admitted facts affirmatively show that the charge is not merely colorable or without foundation." This may mean that in a case where jurisdiction is claimed for a military commission on the basis of disputed jurisdictional facts, the Court will insist that the Government produce something substantial and convincing to support its allegations. It would not be permitted to assert military jurisdiction groundlessly. This is a desirable outside restraint which might prevent the graver abuses resulting from possible arbitrary and irresponsible action by the military authorities.

A third point of interest was the Court's rather summary ruling that the citizenship of the defendant Haupt was irrelevant to the question of the jurisdiction of the Military Commission to try him. He was charged with violating the law of war, and that offense may be committed by a citizen as well as by an enemy alien. Nor is his claim of the right of jury trial strengthened by his citizenship. The civil rights guaranteed in the First

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Ten Amendments and in other clauses of the Constitution are not reserved for American citizens alone, but extend to all persons subject to the jurisdiction of our government.

Finally, the Court's decision, so far from impeding the management of the war, dealt generously with the military authorities. The law of war was recognized and broadly interpreted. The Court showed no interest in the procedural technicalities embodied in the Articles of War enacted by Congress and alleged by defense counsel to govern the President in setting up the Military Commission. Half of the Court thought the technical requirements irrelevant, the other half thought they had not been violated anyway. There was no disposition to discuss them. Finally, the ghost of Lambkin P. Milligan was laid. The Court held, in substance, that the Milligan case is *sui generis*. It arouse out of facts not duplicated in the present case and not likely ever to be duplicated. Its doctrine is confined to those facts and has no relevance to the situation of prisoners whose status has nothing in common with the situation in which Milligan was placed. The case was not overruled; it was merely denied any general applicability outside its own unique facts.

What the case boils down to is this. The Supreme Court stopped the military authorities and required them, as it were, to show their credentials. When this had been done to the Court's satisfaction, they were allowed to proceed. This does not mean that in every case in which military justice is being administered the Court will insist on making a similar scrutiny. But it is a wholesome and desirable safeguard for civil liberty in time of war to have the Supreme Court reserve, and occasionally act upon, the right thus to examine the authority of the military in those cases in which, in the Court's judgment, the public interest and welfare will be served by so doing.

ROBERT E. CUSHMAN.

Cornell University

Congress—Problem, Diagnosis, Proposals: Second Progress Report of the American Political Science Association's Committee on Congress.*

I. THE PROBLEM

The problem with which your Committee has been concerned since its appointment early in 1941 is the place of Congress in the American scheme

* The Committee on Congress was appointed in February, 1941, by President Frederic A. Ogg and reappointed, with one or two changes in personnel, a year later by President William Anderson. Its membership is as follows: Marshall E. Dimock, Washington, D. C.; Pendleton Herring, Harvard University; Meyer Jacobstein, Brookings Institution; Robert D. Leigh, Federal Communications Commission; Benjamin B. Wallace, U. S. Tariff Commission; Schuyler C. Wallace, Columbia University; George B. Galloway (*chairman*), Washington, D. C. The preliminary report presented herewith is as of the date June 30, 1942.

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of government under the emergency conditions of peace and war that have prevailed during the past decade. We have asked ourselves such questions as these:

1. What changes have taken place in the relations between Congress and the Executive? Why? Has there been in fact any surrender of power and responsibility by Congress? If so, to what extent? How can an organic and continuous relationship between Congress and the Executive be established?

2. What are the wartime functions of Congress, and are they being effectively performed? How can Congress supervise the execution of delegated powers?

3. What relations exist today between Congress and the general public? And organized pressure groups? And the press? Between members of Congress and their constituents? And the political parties? What are the grounds of current criticism of the national legislature?

4. What research and staff facilities are available to members of Congress? Are they being used? Are they adequate?

5. Are Congressional organization and procedures well adapted to the efficient performance of legislative functions? What structural and procedural reforms are proposed? What would be the effect of their adoption?

6. Is Congress adequate to the increased requirements imposed upon it by the complexities of modern economic life?

7. Is Congress any more or less representative of the American people today than hitherto? Is there any merit in the suggestion for a change from the geographic to the functional basis of representation?

8. Is there any need to improve the quality of membership in the House or Senate? If so, how could it be done?

These questions suggest the nature and scope of the problems to which your Committee has addressed itself. After a series of weekly meetings with members of Congress extending over a period of nine months, in which some of these questions have been extensively explored, we submit the following summary diagnosis.

II. DIAGNOSIS

1. The contemporary decline in the effectiveness and prestige of Congress in relation to the Executive branch reflects a trend true of representative assemblies generally. It is a concomitant of the rising power of the Executive and finds its inner explanation, *inter alia*, in the great expansion and centralization of governmental functions, the technical nature of modern public problems, the growth of the federal bureaucracy, the power of Executive patronage, the decline of leadership in Congress, and in the impact of the war emergency. The chances are that this trend may

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continue for some time. Dominance in our federal system has shifted to the Executive branch. Perhaps this is not a passing phase in the cycle of politics, but an underlying world-wide trend in institutional relations. State intervention in economic life and foreign wars call for swifter decisions and quicker action than the present deliberative processes of parliamentary democracy usually bring forth.

2. These trends have been intensified by the war. The major functions of Congress in relation to the conduct of the war are two-fold: (a) to provide the commander-in-chief with the powers and sinews of war; and (b) to supervise and review the conduct of the war without attempting to participate in its management. The war-time record of Congress to date is a mixed one, marked both by costly delays and minority obstruction and by the earliest pre-Administration moves for a draft army, stockpiles of strategic and critical materials, construction of pipelines to defense areas, authorization of the Alaska highway, and expansion of air power. The supervisory function of Congress has been performed by keeping check on appropriations, by the use and threat of committees of investigation, and by senatorial confirmation of the appointment of higher officials. In addition, the conduct of the war has been reviewed in debates on the floor and in radio broadcasts which have informed public opinion and influenced Administration conduct.

Despite accusations of Congressional subservience to special interest groups or to the Executive, history will record that the 77th Congress originated many of the most constructive measures that were taken by the federal government to prepare for and prosecute the Second World War. As Speaker Rayburn has well said, Congress cannot administer the laws it writes or manage the wars it declares. In a period of grave national peril, your Committee believes that Congress has coöperated quickly and effectively with the commander-in-chief. It has furnished the powers, the authority, and the funds requested by the President for the conduct of the war. After all the noisy clash of conflicting opinions and the push and pull of pressure groups reflected in hearings and debates, the people's war Congress reached decisions that command the support of a free and democratic people. It has been the mirror of America in midpassage with all its strength and weaknesses, and has made a war-time record that compares favorably with that of any parliament in the modern world.

3. Congress finds it very difficult to keep itself adequately informed upon the inner operations of a vastly expanded and intricate federal machine. It also fails to possess itself of information that is available. While it is well organized through its committee system to appropriate billions of dollars and to enact a legion of laws, it is less well organized to exercise oversight of the Administration. The functions of such oversight are four-fold: (1) to secure compliance with the legislative will; (2) to dis-

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close dishonesty; (3) to check excessive enthusiasm; and (4) to energize the Administration. There are distinct limits, however, to effective supervision by Congress of the Executive branch. There are some who think that chief reliance should be placed upon Executive self-discipline and control by energizing agencies of inspection like the Budget Bureau.

4. During the past decade, policy proposals involving many innovations have emanated for the most part from the Executive branch of the federal government under presidential leadership. This development was due to the continuance of emergency conditions after 1929, and it reflected a pent-up public demand for overdue economic and social reforms following the comparative stability of the 1920's.

Instead of exercising controlling influence in the determination of public policy during this period, Congress seems to have fallen under control of the Administration, perhaps more than ever before. Since 1933, majority party leaders have tended to become managers for the President rather than spokesmen for Congress. The opinion is growing that many Congressional leaders have become too subservient or too deferential to the President. Only a few public laws contrary to the will of the Administration have been enacted by the 77th Congress. During the first session of this Congress, the Administration suffered no major defeats. A few compromises were forced, but, by and large, the Administration requested the legislation and got what it asked for.

5. The traditional machinery for formulating the Congressional party policy and managing the business of Congress—the party caucus, the Rules and Steering Committees, etc.—has been overshadowed by the development of newer *de facto* devices. Most noteworthy among these is the regular Monday morning conference at the White House between the President and the "Big Four": Messrs. Rayburn, McCormack, Barkley, and Wallace, who constitute a kind of legislative cabinet. Various committee chairmen whose bills are on the current docket also attend these meetings, which date back to the early years of the New Deal. At these conferences the President makes his wishes known to the Congressional leaders, they inform him of legislative sentiment, and the legislative program for the following week is presumably planned. It has been suggested that these conferences might well be regularized and formalized.

6. One way in which the Executive is playing a larger part than hitherto is in the formulation and maturing of major legislation. Machinery for the central clearance and coördination of administrative legislation has been created in the Division of Legislative Reference of the Bureau of the Budget. There has also been a notable growth of subordinate legislation among administrative agencies designed to implement the objectives and spell out the standards laid down by Congress. However, the essential principles, even of important measures, occasionally originate in Congress.

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7. The American people still believe in popular government and have faith in Congress as an institution, but in recent years Congress has lost some of its prestige with the public. Adverse comment seems to be increasing since the United States entered the war. Some honest critics stress various alleged shortcomings of our national legislature. Other attacks are believed to veil "an assault upon representative government itself." Some go so far as to believe we have retained representative institutions from habit rather than conviction. Others fear that Congress may become "a weak and timid appendix to bureaucracy."

The present Congress has been blamed for the alleged "pension grab" with its politics-as-usual flavor, for the attempts of the farm *bloc* to avoid price control and prevent the sale of surplus government food stocks, for efforts to control appointments to public office, for failure to settle the labor issue, for delay in preparing the country for war, for failure to economize on non-war governmental expenditures, for failure to adapt its organization and methods to the requirements of the war crisis, for frequently calling busy executives before its committees, and for lagging behind public opinion on war issues.

On the other hand, Congress has been praised for a series of achievements, including prompt grant of all the funds and powers sought by the President for the prosecution of the war, and the exposure of serious defects in the administration of the defense program. "Only the Congress of the United States," says Senator O'Mahoney, "stands between the people of the country and an all-powerful central government."

8. It has always been difficult for a member of Congress to take an overall view of the interests of the country as a whole. The interests of his district or section are likely to be paramount with him, for he depends upon their support for reëlection. Correspondence and specific personal services to constituents consume a large part of every member's time, leaving little for the study of important legislation. The volume of this traffic varies with the member and public interest in pending bills. But every day brings its series of personal interviews, its stack of letters requiring reply, and its varied requests. Senator Tydings once reported that his typical day included sixty interviews, three hundred letters, one to five committee meetings, and a meeting of the Senate.

Requests from constituents require the dutiful member to spend many hours running errands, interceding with federal departments, responding to patronage demands, rendering legal services, seeking a commission or promotion in the army or navy, getting government publications, adjusting income taxes, attending to pension claims, seeking relief from multiplying federal regulations, entertaining local politicos from back home, and the like. Many of these requests such as those for high school debate materials, legal information, copies of speeches made in Congress, poetry

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queries, legislative history of acts of Congress, and Fourth of July oration data are referred to the Legislative Reference Service.

Members who hope for reëlection feel duty-bound to run errands for their constituents and answer their letters. As Vice President Garner once remarked, "Letters are a Congressman's bread and butter." This burdensome business led one writer to characterize congressmen as "Uncle Sam's bellboys" running a "popular chain store service" for their constituents. Obviously, little time is left for matters of national importance, a condition of which congressmen themselves complain. In so far, however, as this type of personal public relations service by a member to his constituents tends to humanize the administration of a huge impersonal bureaucratic machine, it may be regarded as a proper function.

9. In addition to the pressure of local interests, many members of Congress also belong to the labor *bloc* or the farm *bloc* or some other interest-group. And they work with the administrative agencies that serve the corresponding sectional interests. Thus a pressure-group economy and society gives rise to "government by whirlpools" of special interest groups in which the national interest is often neglected. The pulling and hauling of powerful pressure groups creates delays and distortions that imperil national safety in war-time and threaten bankruptcy in peace-time.

10. With a few notable exceptions, e.g., the Joint Committee on Internal Revenue and the House Appropriations Committee, Congress has not taken steps to strengthen its own research and staff facilities. Reliance has been placed instead upon the administrative departments and private research agencies, each of which has its own bias. Increasing use has been made in recent years of the neutral Legislative Reference Service in the Library of Congress, both by members and by committees of Congress; and several "basic data" reports have been prepared by the Service upon request of Congressional committees. New members, however, are often unaware of the research facilities available to them at the Library of Congress.

11. Our national legislative system has developed some unforeseen usages and characteristics. These include the disintegration of leadership in the Congress among many little committees or ministries and inadequate machinery for effective control of the Executive. Much attention is devoted to local and sectional affairs at the expense of the national interest. All the greater powers of government have tended to become centralized in the hands of the Executive branch. The number of federal agencies multiplies apace, and likewise the sources of public policy. Demands upon the energy and wisdom of Congress almost overwhelm its resources as they are now organized. Debate in the House is often aimless and legislation inconsistent. Regardless of the prerogatives of the Rules Committee over House procedure, or of the privileged status of special rules, the final de-

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termination of legislative priorities is lodged elsewhere, i.e., in the Speaker, the floor leader, and one or two other leaders all of whom are under pressure by the President. This small group has effective power to suppress or postpone consideration of specific measures. They give precedence to particular bills rather than formulate a program.

12. During the 77th Congress, several special or select investigating committees were created in the House and Senate. There was little concert of action among them, however, although they covered overlapping ground. For example, four committees were authorized to investigate various aspects of the national defense program; two were instructed to investigate problems of small business enterprise; and two others to study the migration of labor. While no major piece of legislation was enacted in pursuance of their findings, nevertheless the defense program was improved in certain respects as a result of publicizing its defects.

13. Joint committees have been proposed to economize the business of Congress and the time of busy administrators. But they are not popular in the House because they are apt to be dominated by the Senate members. A Joint Committee on the Conduct of the War would probably be controlled by the leadership of the President's party. If so, it would be limited as a means of independent criticism and control. The most effective independent criticism usually emanates from special committees of either house. Joint hearings by separate House and Senate committees, followed by independent deliberation, have also been suggested. This is the practice in the Massachusetts legislature.

14. The caucus is a potential instrument of party discipline. Historically, the caucus as an institution has waxed and waned. Factors favorable to it have been a fairly equal distribution of party strength in Congress and a situation in which opposing parties control Congress and the Executive. At present, the caucus is moribund, due, in part, to party realignments and, in part, to the current importance of legislation cutting across party lines. The caucus ostensibly formulated party policy and held party members to it, unless they were absent or alleged conscience or the Constitution. Its disappearance shifts the pressure of party alignment and allegiance to other devices, e.g., the party whips.

15. The typical member of Congress identifies himself not so much with Congress as an institution, or with his political party, as with the committees of which he is a member, and through which Congress largely functions. There are seventy-seven standing committees in Congress today, forty-four in the House and thirty-three in the Senate, but their activities are largely hidden from the public view, and not all of them are major, active committees. It has been suggested that committees should be smaller in size and fewer in number, with identical names and jurisdictions in both houses, and organized along lines paralleling the structure of the

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permanent administrative agencies. It has also been suggested that the committee structure should be determined from the standpoint of the policy-making function rather than the supervisory function of Congress, in which case each great area of public policy would have its corresponding committee.

16. The centralization of governmental functions, the complex and specialized character of modern legislation and administration, the newer means of rapid, large-area dissemination of ideas, and the equally modern methods of accurate sampling of current opinion have inevitably altered the position of Congress in making and administering laws, in creating, focussing, and expressing opinion. Yet despite press conferences, fireside chats, columnists, commentators, and Gallup polls, Congress still possesses essential deliberative and representative functions which no other group is equipped to perform so well.

These functions as yet have not become sharply focussed or publicly recognized. The low esteem in which the public is currently reported to hold the national legislature may be due partly to a failure on the part of Congress to acknowledge and to develop its own peculiar functions, and partly to the obscuring of the performance of its solid, essential activities behind archaic forms of traditional parliamentary behavior carried on in the public view. In short, Congress, unlike the President and the Supreme Court, puts its worst foot forward to the public view.

A major improvement might be that of bringing Congressional form into line with the realities of the peculiar tasks. This would involve at least three procedural changes, all of which require merely the revision of legislative rules and practice, not of statutes or constitutional provisions.

First would be the recognition of committee work as the heart of Congressional activity. Here, actually, congressmen organized in segments review the operations of administration, of legislative and spending proposals, and, at times, themselves initiate new law. Committee work includes hearings as well as discussion in closed meetings. It involves contact with experts and written material. It is the center of legislative activity where criticism of administration and decision upon proposed legislation is largely made. Consequently, most of the days and most of each day of a Congressional session should be legally and specifically devoted to committee meetings. Hearings, preferably joint hearings for concentration of attention, should be open to the public by card, as is now the Senate gallery, and should be recognized by constituents and sightseers as the way to see Congress at work. Rather than looking down at a forlorn performance before empty chairs, the public could choose between attendance at one or more parts of a twelve-ring committee circus where questions and argument would be lively and real.

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Full meetings of the two legislative bodies are actually used for two main purposes, i.e., (1) to record votes on specific measures reported from committees, and (2) to carry on debate, not so much to affect the votes of the other members as to influence public opinion among the congressman's constituents and to explain the legislator's negative or affirmative votes on specific measures. These functions could readily be performed during two or three evenings a week. Thus there might be an evening session once a week or, near the end of a session, a full day session—say Friday—during which formal committee reports and votes should succeed each other with something like the simple dignity of an opinion day in the Supreme Court. When contended measures were to be voted upon, such weekly voting sessions might be well attended, with galleries filled and a radio box informing the country and interpreting to it the decisions made. The public would see and hear the Congress acting out in a business-like way one of its essential rôles—that of recording decisive popular judgments on legislation.

Similarly, Congressional debate could be telescoped into one or two other evenings a week—say Monday and Wednesday, with a reciprocal adjustment of *Quiz Kids*, *Information Please*, and Raymond Gram Swing to avoid too much competition—with Congressional leaders debating major legislative issues before their own visible audience and the radio audience. It is not too much to hope that this rostrum argument would furnish some complement to, if not rivalry with, fireside chats, Town Halls, and University Round Tables.

Actually, only a small number of congressmen could participate in these preferred positions of public national debate. But the others, instead of engaging in frustrating harangues before empty benches, could regularly be given places on the agenda of committee hearings to present their views and arguments. For this purpose, places on the agenda would be open rather freely to non-committee members.

Most congressmen are not national figures. They are not entitled to, nor will they, gain the ear of a national audience. But in practically all cases they are prominent state and local figures. It is their essential function to interpret national policy, laws, and administration to the localities and *vice versa* to assess, to focus, to interpret local opinion to the national government. No other branch of the federal government is constituted to perform this essential representative function. It is important that the function be publicly recognized and regularized in the Congressional time-table. This might be done by a regular monthly four-day recess during which there would be no voting, debates, or committee sessions in Washington, and during which congressmen and senators would be expected to return to their states and districts there to give an account

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through radio or public speeches to their constituents of their votes and proposals and to receive at first hand delegations of citizens interested in controversial issues.

These three procedural changes may seem to leave out of account the dreary stream of parliamentary by-play and desultory discussion, frequent bluster and occasional filibuster, embalmed in the *Congressional Record* for libraries to file and a few hundred curious scholars to read. They do leave out all such archaic practice. Actually they would not be missed. In their place would be solid days in committee rooms in the vital atmosphere of conversational, or at least courtroom, give and take; periodic evenings in the simple rite of a succession of polls or votes, a weekly Congressional radio evening no longer than, occasionally as exciting as, and almost always as important as, a baseball game; a monthly return to the home folks to persuade, to explain, and to listen to the constituency which creates and may destroy the mandate under which the congressman acts. Such a reorganization of procedure would leave unsolved many problems. But it would be a step in the direction of uniting appearance with reality in the legislative process, and would give promise of adding to the respect and understanding in which the legislative branch is held by the country at large.

17. In addition to these changes, several methods of increasing the effectiveness of Congress have been suggested by various observers. Some are concerned with relations between Congress and the Executive branch; others focus attention on the relations between Congress and the general public. Some propose to improve legislative staff aids; others advocate reforms in Congressional structure or procedures. Some favor changing the basis of representation in our national legislature; others aim at improving the quality of the membership. A summary follows of the most noteworthy proposals affecting Congress that have been brought to the attention of your Committee.

III. SUMMARY OF PROPOSALS AFFECTING CONGRESS[1]

Relations with the Executive:

1. Make members ineligible for Presidential appointment until two years after expiration of their terms.
2. Decentralize the business of government to relieve undue pressure at the center, revitalize the periphery, and restore efficiency at both ends.
3. Regularize contacts between Congressional committees and corresponding administrative agencies.

[1] The Committee wishes it understood that the remedies proposed in this section of the report are merely suggestions that have been offered, and that they have not been endorsed by a majority of the Committee members.

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4. Regularize and formalize weekly conferences between the President and the leaders of Congress, creating a Legislative Cabinet.
5. Provide by law that members of the Cabinet shall be entitled to occupy seats on the floor of Congress, with the right to participate in debate on matters relating to the business of their several departments.
6. Expand the facilities of the General Accounting Office by creating therein an Executive Efficiency Service.

Relations with the Public:

1. Debate legislative issues over the radio.
2. Develop better Congressional publicity.
3. Let each member at the end of each session send a report to his constituents showing how he voted and why on all major bills.
4. Have shorter sessions so that members can spend several weeks a year in their districts cultivating better relations between Congress and the people.
5. Hold voting sessions and debate sessions of Congress each one evening a week and broadcast to the country: committee hearings and sessions to occupy regular weekday schedule and hearings in most cases to be open to the public; monthly recess for Congressmen's return to constituencies for public report and conference.

Staff Aids:

1. Give each active and important committee of Congress an expert staff or a research assistant connected with the Legislative Reference Service of the Library of Congress.
2. Expand the staff of the Legislative Reference Service by increased appropriations.
3. Achieve coördination at the staff level by creating in the LRS a single research pool for all investigating committees.
4. Locate an LRS liaison officer in the House Office Building.
5. Invite new members to visit the Library of Congress and learn of services available there.
6. Supplement annual reports of Departments to Congress by questionnaires issued to the Departments by the corresponding Congressional committees, showing their replies.
7. Set up a joint committee of the House and Senate on planning and reconstruction, with an expert staff to serve as a liaison between Congress and administrative agencies, to analyze their reports, and to provide Congress with an independent source of information.

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Changes in Structure:

1. Create a Joint Committee on the Conduct of the War composed of representatives of the House and Senate Military and Naval Affairs and Appropriations Committees.
2. Create one joint committee with several subcommittees on different segments of the war program.
3. Assign particular aspects of the war program to select committees to investigate.
4. Reorganize the committee system in both houses so that there would be nine or ten major committees in each house paralleling the principal administrative departments. Chairmen of major committees to form a Legislative Cabinet which would control legislation.
5. Create a joint committee composed of the present Appropriations, Ways and Means, and Finance Committees, with a strong staff, to bridge the gap between the Legislative and Executive branches in budgetary matters.
6. Create a Joint Committee on Public Accounts.
7. Appoint a special committee of Congress to study its structure and procedures.

Changes in Procedure:

1. Let committees of Congress choose their own chairmen on merit and abolish the seniority system.
2. Elect committees from the floor or in caucus.
3. Hold joint hearings when similar bills have been introduced in both chambers.
4. Give jurisdiction over private claims to U. S. district courts.
5. Consolidate all federal appropriations for construction into one appropriation bill, to be considered by Congress at the start of each regular session. This would gear the appropriating mechanism to public works policy, eliminate political pressures for a geographical distribution of funds on each departmental appropriation bill, and secure enactment of a public works program in time to undertake it during the approaching construction season.

Improvements in Membership:

1. Pay higher salaries.
2. Have four-year terms.
3. Reduce the size of the House.
4. Grant federal aid to defray costs of campaigns.
5. Organize an in-service training school for new members.
6. Educate the electorate to choose better men to represent them.

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The Rôle of State Governments in the Post-War Era. The states can do little toward winning the war except to give their whole-hearted coöperation to the President's program for prosecuting the war. This coöperation is, of course, essential and of inestimable value; but the states are not engrossed in planning strategy, directing the war effort, or financing the struggle. By comparison with the federal government, they have immeasurably more time and energy available for engaging in other activities. This time and energy should be devoted to the achievement of something constructive; and the most constructive contribution which the states can make to our national economy is to devote themselves now to the task of preparing for a rôle of active participation in dealing with the serious problems with which we shall probably be confronted after the war. Even if those problems, for one reason or another, do not materialize, it is far better to be prepared for an emergency which never comes than to be unprepared for one which does come.

Compared with the federal government, the states are in a relatively sound financial condition. Most of them are not so heavily burdened with debts as to be faced with staggering problems in that respect, and most states, through proper planning and management, can greatly diminish their debt loads and reduce unnecessary operating expenses even while the war is going on. As a matter of fact, many states have been enjoying surpluses. It is possible that since many derive their largest amounts of revenue from such sources as sales and use taxes, gasoline taxes, and the like, they may find their existing tax laws not adequate to continue to produce surpluses. The increasing scarcity of consumers' goods for sale, gasoline rationing, and other factors may operate to deflate state revenues. Thus far, however, predictions concerning the immediate threat to the financial security of the state governments have not been too alarmingly borne out by the experience of most states. Even if state revenues decline to some extent under existing state tax laws, most of the states will not be confronted with insoluble financial problems in the immediate future; and the states are unquestionably in a far better position economically to strengthen their financial structures and to plan for the future than is the federal government.

Obviously, this is the chance for the states to reclaim the high station which they formerly occupied in our national scheme of things and to reestablish themselves as indispensable American institutions. And now is the time to act. When the war is over, the state governments should be prepared to participate actively in any program of rehabilitation which may be necessary. They should be ready to bear their fair share of the effort and expense necessarily accompanying the carrying out of any such program, and they should be equal to the task of assuming any rôle of leadership and direction which they may be called upon to fill. Nobody

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can quarrel with states which seek to rehabilitate themselves and which thereby endeavor to contribute actively and constructively to our national welfare, and such a display of democracy in action will inspire in the people of this country a renewed confidence in the vitality and sufficiency of democratic institutions by demonstrating that economic recovery, when planned for, can be achieved without need for authoritarian direction from above.

Basically, there are four aspects to the plan which every state should immediately adopt and commence to execute. First, every state should start at once to pay off its debts as rapidly as is practicable and consistent with sound state fiscal policy, and every state should otherwise endeavor now, and for the duration of the war, to place its economic house in order so that it can meet any post-war financial crisis that may come, and so that it can superimpose any structure of necessary post-war activities, requiring the expenditure of money, upon a solid financial foundation. Second, every state should maintain or increase existing tax levels and reduce expenditures, as far as possible, for the purpose of accumulating surpluses, and these surpluses should be earmarked and set aside for use after the war is over. Third, every state should begin immediately to lay out the details of a program for the use of these surpluses during the period of post-war readjustment. Among the possibilities which should be studied by each state are slum clearance and housing projects; the need for the erection of public buildings; the necessity for repairing and expanding highway systems; plans for the construction of playgrounds; the development of writing, drama, and other cultural programs; the desirability of erecting and maintaining conservation camps; youth projects; the possibility of expanding programs for adult vocational education; the need for reëxamining, reëvaluating and expanding public health, welfare, and educational services and facilities; the desirability of furnishing state hospital and clinical services; programs intended to expand and improve our facilities for scientific research and experimentation for the purpose of bettering production methods both in industry and in agriculture, for the purpose of finding more uses for industrial and agricultural commodities already produced, and for the purpose of finding new products which industry and agriculture can produce economically; the need for creating more adequate safeguards to protect the consuming public; the need for greater extension of adequate roads and electrification facilities into rural areas; the development of plans and machinery designed to effect more harmonious relations among workers and to encourage greater coöperation among labor, management, and the interested public; the need for developing more equitable systems of taxation; and countless other projects. Every state should commence now to inventory all of its individual needs. These, of course, will vary with each state, but all efforts should be directed

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toward the major objectives of providing employment, training, and care for, and greater service to, our citizens after the war. Fourth, every state should commence immediately to encourage local governments to economize and otherwise to strengthen themselves financially in order that they, too, may prepare to assume their proportionate share of responsibility for solving the social and economic problems with which they may reasonably expect to be confronted in the post-war era.

The paying of debts, the elimination of unnecessary expenditures, the building of reserves, the sterilization of these reserves for use in meeting post-war needs, and the preparation now of blue-prints of public works and services which will create employment and offset possible post-war depressions, and which will provide better training and care for, and greater service to, the people of the country, together with enlistment of the support and coöperation of local governments, are matters which the states are capable of initiating, developing, and consummating. Officials of the several states should confer with each other frequently for the purpose of exchanging ideas and suggestions and for the purpose, where possible, of coördinating the efforts of the individual states in carrying out their respective programs. The states should also avail themselves of any coöperation which the federal government can extend to them now, although they should constantly remember that the immediate responsibility for initiating and planning the program is primarily theirs.

At a Conference of the Council of State Governments held in Chicago last spring, legislators and administrators representing the Midwestern states met and formulated a broad program which they recommended to all of the states for adoption. The purpose of the conference was to outline for state and local governments the contributions which they can make to the present war effort and to the solution of possible post-war problems. The Conference's report, designated as a report "Adopted by the Regional Conference on Fiscal Problems of the Midwestern States," on May 15, 1942, lays particular stress upon the part which the state and local governments should play in the prosecution of our war effort. A portion of this report is here quoted:

"To prosecute the war to a successful conclusion, this Conference recommends that state and local governments adopt the following fiscal policies: (1) Pay off debts. (2) Restrict expenditures. (3) Build up reserves and sterilize such reserves in dormant bank deposits or in federal government bonds. (4) Maintain tax rates consistent with the national and state economy. (5) Prepare to offset possible post-war depression by developing programs and blue-prints for public works and services, and by accumulating means of financing them. (6) Remove hindrances to production, convert state-owned facilities to war uses. (7) Improve administrative management to conserve manpower and commodities and to minimize

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impairments of services. (8) Join actively in the national economic policy to control the cost of living. (9) Distinguish carefully between war-created local needs that warrant federal aid and those that should properly be met out of local resources. (10) Re-appraise the educational system, with special consideration given to vocational training and rehabilitation. (11) Re-appraise existing health, welfare, and related activities and services in the light of changed economic conditions."

As the opening sentence of this quotation indicates, the conference recommended that state and local governments adopt the foregoing suggestions for the purpose of assisting in the prosecution of the war effort. All of the recommendations should be adopted by the states, not only for the purpose of assisting in the prosecution of the war effort, but also for that of preparing the states to play an active rôle in the solution of our post-war problems.

Such a plan as the one under discussion, particularly that portion relating to the maintenance or increase of present state taxes, will collide with the interests of individuals and groups within the states and undoubtedly will meet with savage, organized opposition. Already, in many states where cash surpluses have been accumulated, organized agitation has developed for the reduction of taxes. The argument most urgently advanced is that since the federal government is continually increasing the tax load of citizens, the states should manifest a spirit of coöperativeness by curtailing state taxation. However, the states will be very unwise if they allow this or any other argument of similar import to dissuade them from maintaining, and even increasing, existing tax levels for the purpose of building up substantial reserves for use in carrying out carefully planned programs for post-war rehabilitation. The states should neither shirk their responsibility nor pass by their opportunity of assuming a rôle of active participation and leadership in the post-war era merely because, by closing their eyes and following the path of least resistance, they could achieve a slightly greater degree of immediate, but only temporary, harmony. Most people recoil from the thought of paying higher taxes; but the vast majority of average American citizens will pay, and will pay still more, however much they may grumble in the process, if they are convinced that they are paying for a worth-while cause.

But the creation of cash surpluses by the states may operate as a boomerang unless adequate safeguards are provided. Cash surpluses created by increasing state taxation should be clearly segregated and kept separate at all times from other state money, and these funds should be rigidly circumscribed by every known protective device, including legislative restrictions if necessary. It should be made as nearly certain as possible that no money set aside for post-war use will be within the reach of those un-

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able to endure the thought of being denied the realization of some pet dream or selfish project while cash reserves pile up before their covetous eyes. It is also both advisable and necessary that such cash reserves be earmarked specifically for post-war use so as to enable state officials to withstand those political pressures always brought to bear upon them when taxpayers become aware that there exists in the state's possession a cash surplus for which no clear-cut explanation can be advanced.

Even if some of the states, during the war, find it difficult or impossible to create, to segregate, and to maintain substantial reserves of funds for use after the war, every state should now do everything in its power to pay off as many of its debts as possible, to economize and otherwise to improve its financial condition so as to be in as strong a financial position as possible, when the war ends, to launch a vigorous program designed to combat unemployment and other problems which it may be called upon to assist in solving. Likewise, a state's inability at present to create revenue surpluses should not discourage it from drafting plans for post-war action. The least that a state can do in this respect is conscientiously to attempt to determine in advance what its probable post-war needs and problems will be, and to know what it wishes to do about them, whether or not it can clearly visualize at the moment the exact sources from which it can derive the revenues necessary to finance a large-scale post-war employment and rehabilitation program.

This latter phase of the plan under discussion—the development of plans whose execution after the war may tend to create the necessary transitional employment and care for our people—will also be subjected, if adopted by the states, to vicious and vigorous attacks. For example, plans for slum clearance and housing projects will be assailed by real estate organizations. There is probably no phase of the program to which some influential persons, having vested interests in the existing order, will not vehemently object.

The real danger to the chances of success of a plan such as that under discussion lies in the fact that numerous state officials are too susceptible to political pressures. Many find it difficult enough to meet squarely the emergencies of the moment. Even less likely is it that they will take a firm stand for the carrying out of a long-range program designed to forestall the occurrence of a possible future crisis. If the states, as we know them, should utlimately lose their importance as vital American institutions, and if they should eventually disappear in substance from our political system as living organisms and as vital bulwarks of democracy, their downfall will be attributable, in part at least, to shortsightedness and fear of political pressure on the part of state leaders themselves. If the malefic attitude which some key state officials have evinced toward their civic

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responsibilities is successfully combined with the shortsightedness and selfishness of other state leaders so as to dictate the policies which the state governments will pursue now and after the war with respect to the problem of anticipating and meeting the country's post-war needs, we may reasonably expect to be confronted after the war with two alternatives—the one, disastrous collapse and revolution, the other, the relentless extension of national regimentation.

WILLARD ICE AND SIMON STICKGOLD.
Illinois State Department of Finance.

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RURAL LOCAL GOVERNMENT

County and Township Government in 1941.* With national defense problems paramount in the public mind, it is not surprising that developments in rural local government during 1941 revealed, more than in normal times, the imprint of national and world conditions. State legislatures, though their sessions preceded Pearl Harbor, devoted much attention to defense problems and assigned to local governmental units an important rôle in defense organization and activities. Various steps were taken to foster coöperation in the defense effort by government at all levels; and, in view of the necessity for large national expenditures for defense purposes, additional emphasis was placed upon the need for local economy. Concurrent with the various defense-related developments was a continuation of normal peace-time efforts to improve the organization and operation of rural local government. As in former years,[1] the events of 1941 will be summarized under the following headings: (1) areas; (2) organization and personnel; (3) functions; (4) finance; (5) optional charters and home rule; and (6) intergovernmental relations.

I. AREAS

Outstanding among developments of the year with respect to local-government areas was the continued stream of legislation creating, or authorizing the creation of, special districts. Arizona, Ohio, and Wyoming were added to the list of states which authorize the formation of soil conservation districts.[2] By June 15, 1942, 771 such districts, embracing approximately 451,990,000 acres and including more than two million farms, had been established in 41 states.[3] Florida authorized the creation of erosion-prevention districts within any county. Flood-control districts, to be governed by the respective county commissioners courts, were established in four Texas counties. Organization of fire-protection districts was authorized in Colorado and in certain Missouri counties. Various counties in Missouri and Washington, and certain Kansas townships, were empowered to establish sewer districts. Washington extended to all counties the power, previously granted only to Class A counties, of establishing sanitary districts for the collection of garbage in areas outside municipal corporations. Other *ad hoc* districts the establishment of which was author-

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[1] See this REVIEW, Vol. 31, pp. 884–913; Vol. 32, pp. 936–956; Vol. 33, pp. 1058–1072; Vol. 34, pp. 1145–1166; Vol. 35, pp. 1106–1119.

[2] *Acts, Resolutions, and Memorials of Arizona*, 1941, ch. 43; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 812; *Session Laws of Wyoming*, 1941, ch. 134.

[3] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *infra*, "Federal-Local Relations."

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ized include park and recreation districts in Oregon, rural water supply districts in Kansas, and rural free library districts in Washington.[4]

There seemed to be somewhat less interest than usual in reducing the number of governmental areas through consolidation or dissolution.[5] In Connecticut, the governments of Guilford borough and the town of Guilford were consolidated. Several similar consolidations effected in that state in former years were reported to have been successful in reducing duplication of officials and overlapping of functions.[6] A bill to abolish Indiana townships having less than $500,000 assessed valuation failed of passage in the end-of-the-session rush. Had the measure become law, it would have operated to abolish approximately one hundred of the state's 1016 townships.[7]

II. ORGANIZATION AND PERSONNEL

New Offices. Several states, in legislation providing for state and municipal councils of defense, also authorized the establishment of county defense councils.[8] Power to establish such councils is vested in some instances in the chairman or president of the county board; in others, in the county board as a whole, to be exercised by ordinance; and in still others in the state defense council. The agency creating the council ordinarily determines its composition. Under the provisions of this enabling legislation, defense councils have actually been established in numerous counties, particularly in the coastal areas.[9]

Arkansas established in each county an *ex officio* delinquent tax board

[4] *Laws of Colorado*, 1941, ch. 130; *General Acts and Resolutions of Florida*, 1941, p. 2435; *Kansas Session Laws*, 1941, chs. 7, 399; *Laws of Missouri*, 1941, pp. 505, 557; *Oregon Laws*, 1941, ch. 327; *General and Special Laws of Texas*, 1941, p. 568; *Session Laws of Washington*, 1941, chs. 65, 98, 210.

[5] Notwithstanding the continued creation of new governmental units, the last decade has witnessed a net reduction in the total number of local units, particularly in rural areas. The most substantial decreases, principally through consolidation and dissolution, have been in school districts, towns and townships, and special districts. See William Anderson, *The Units of Government in the United States* (Public Administration Service, Chicago, 1942 ed.).

[6] Max R. White, "Town and City Consolidation in Connecticut," in this REVIEW, Vol. 36, pp. 492–502 (June, 1942).

[7] Gail M. Morris, note in *National Municipal Review*, Vol. 30, pp. 304–305 (May, 1941).

[8] For example, *Statutes of California*, 1941, ch. 561; *General Acts and Resolutions of Florida*, 1941, p. 45; *Laws of Illinois*, 1941, Vol. I, p. 1264; *Kansas Session Laws*, 1941, ch. 347; *Laws of New York*, 1941, chs. 22, 210; *Acts and Joint Resolutions of South Carolina*, 1941, p. 203. See *infra*, "New Functions."

[9] In some instances the work of several county councils within a particular area is coördinated through a regional council. See, for example, Samuel C. May and Robert E. Ward, "Metropolitan Civilian Defense in the San Francisco Bay Region," *Western City*, Vol. 18, no. 5, pp. 18–19 (May, 1942).

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to supervise collection of delinquent taxes on personal property.[10] Several Tennessee counties were provided with general sessions courts, consisting of salaried judges with county-wide jurisdiction, to replace justice-of-the-peace courts.[11] North Carolina established the office of tax collector, or authorized its establishment, in various counties; and public library boards were created for two South Carolina counties.[12] Kent and Sussex counties in Delaware were provided with departments of elections consisting of three members appointed by the governor.[13]

Office Consolidation. After a turbulent course in which failure had several times been encountered,[14] the movement to consolidate the county offices of register and sheriff within New York City finally met with success. The city voters in the November election, while rejecting two alternative proposals supported by the Democratic party, approved a charter amendment which provides for single city-wide offices of register and sheriff filled by the mayor from civil service lists. The successful amendment had been proposed by initiative petition and was sponsored by various civic groups. Following adoption of the proposal, the New York City civil service commission held competitive examinations for the two positions, and late in December Mayor La Guardia appointed the first incumbents of the new offices from the registers of eligibles so established. These appointees took office on January 1, 1942, and immediately began reorganization of their office staffs on a civil service basis.[15] The validity of the charter amendment was upheld in December, 1941, by the New York court of appeals.[16]

Each of three optional forms of county government provided by North Dakota statutes[17] involves a substantial degree of office consolidation. Under the Consolidated Office Form, the county auditor serves as county judge, register of deeds, and clerk of the district court. With respect to the offices of sheriff, state's attorney, and superintendent of schools, inter-

[10] *Acts of Arkansas*, 1941, no. 342.

[11] *Private Acts of Tennessee*, 1941, chs. 6 (Hamilton), 50 (Madison), 91 (Warren), 363 (Bledsoe), 393 (Henderson), 509 (Lewis). Justices of the peace in these counties, although divested of jurisdiction over civil and criminal cases, retain their authority to serve as members of the quarterly court (county board) and to perform marriages.

[12] *Public-Local Laws of North Carolina*, 1941, chs. 78, 91, 100, 164, 329, 361; *Acts and Joint Resolutions of South Carolina*, 1941, pp. 91, 101.

[13] *Laws of Delaware*, 1941, chs. 125, 126. A similar department, under a larger board, had been provided for New Castle county two years earlier. *Ibid.*, 1939, ch. 115.

[14] See this REVIEW, Vol. 34, pp. 1149–1150; Vol. 35, pp. 1107–1108.

[15] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 30, pp. 604, 658 (Oct., Nov., 1941); Vol. 31, pp. 47–48 (Jan., 1942).

[16] Burke v. Kern, 287 N.Y. 203, 38 N.E. (2d) 500 (1941).

[17] See *infra*, "Optional Charters and Home Rule."

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county consolidation is to be permitted, the county board being authorized to appoint to any one or more of these offices, to serve on a part-time basis, the corresponding officer of an adjoining county. The County Manager Form provides that the sheriff shall assume the duties of constable and coroner; the county judge those of justice of the peace and clerk of the district court; the director of finance those of auditor, treasurer, and register of deeds; and the director of public works those of surveyor. Under the Short Form of County Managership, the manager assumes the duties of auditor, register of deeds, coroner, public administrator, and surveyor, and may, at his discretion, perform the duties of tax collector, treasurer, and purchasing agent. Duties of justice of the peace and clerk of the district court are transferred to the county judge. The manager may appoint as sheriff or state's attorney the corresponding officer of an adjoining county.

Special acts in Georgia and North Carolina effected the consolidation of designated offices in specified counties.[18]

Terms of Officers. More attention was given than for several years past to lengthening the terms of local officers. In Indiana, first legislative approval was given to proposed constitutional amendments to increase from two to four years the terms of the county treasurer, sheriff, coroner, and surveyor, and of the prosecuting attorney.[19] The Montana legislature proposed a constitutional amendment, for submission to the voters in the 1942 election, which if adopted will increase from two to four years (1) the terms of the constitutional offices of county attorney and justice of the peace, and (2) the maximum term which may be provided for county and other local offices established by statute. Missouri increased from two to four years the terms of constables in certain counties and townships.[20] North Carolina continued, as in former years, to enact special laws lengthening the terms of designated officers in particular counties.[21]

County and Town Executives. Manager government for counties and towns continued to attract widespread interest. North Dakota, in enacting a series of optional-government laws in conformity to constitutional mandate, provided two varieties of county-manager government, as well as a third alternative form of organization under which some degree of administrative authority would be centered in the county auditor.[22] The Nebraska legislature, undaunted by previous reverses at the hands of the

[18] *Acts and Resolutions of Georgia*, 1941, pp. 726, 754, 978; *Public-Local Laws of North Carolina*, 1941, chs. 111, 157, 233.

[19] *Laws of Indiana*, 1941, pp. 972, 973. The other principal county officers in Indiana (auditor, recorder, and circuit clerk) are already provided with constitutional four-year terms.

[20] *Laws of Missouri*, 1941, pp. 325, 326; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 116.

[21] *Public-Local Laws of North Carolina*, 1941, chs. 13, 116, 117, 165, 399. See this REVIEW, Vol. 34, p. 1150.

[22] See *infra*, "Optional Charters and Home Rule."

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courts and the voters,[23] again proposed a constitutional amendment to permit the enactment of a county-manager law. If the proposal is ratified, the legislature will be authorized to provide an optional form of government in which county officers may be either elected or appointed.[24]

Modified forms of manager government were provided by special legislative acts for the counties of Hamilton (Chattanooga) in Tennessee and Darlington in South Carolina. The manager in Hamilton county is to be appointed by a county council (consisting of the county judge, as *ex officio* chairman, and four elective members) to serve during the council's pleasure; but the powers conferred upon him fall considerably short of those usually considered essential to effective operation of the manager plan. Though the manager may make recommendations with respect to appointments, the appointing power is lodged in the council. The taxing power remains with the quarterly county court, but it is made mandatory upon that body to levy taxes sufficient to cover the expenditures provided for in a budget adopted by the council. In Darlington county, the manager is to be appointed by the governor, on recommendation by a majority of the county legislative delegation, for a two-year term. Powers heretofore vested in the county commissioners and county directors are transferred to the manager; and he is specifically authorized to supervise public works, countersign warrants for the disbursement of funds, and purchase county supplies and equipment. An advisory commission of five members, appointed in the same manner as the manager and for the same term, is authorized to advise the manager in the performance of his duties; and, in connection with county purchasing, to promulgate binding regulations concerning advertisements, bidding, and the acceptance of bids.[25]

The Maryland counties of Anne Arundel and Wicomico were reported as displaying interest in manager government; and the plan was recommended for Montgomery county, in the same state, in a survey report by the Brookings Institution. In the Oregon legislature, a joint resolution proposing a constitutional amendment to provide for county manager government was approved by the house of representatives, but failed of passage in the senate.[26]

[23] See this REVIEW, Vol. 31, pp. 890, 907; Vol. 34, p. 1150; Vol. 35, p. 1108.

[24] *Session Laws of Nebraska*, 1941, ch. 46.

[25] *Acts and Joint Resolutions of South Carolina*, 1941, p. 54; *Private Acts of Tennessee*, 1941, ch. 156; Elwyn A. Mauck, note in *National Municipal Review*, Vol. 30, pp. 174–177 (Mar., 1941); James K. Coleman, note in *ibid.*, pp. 371–372 (June, 1941). The South Carolina statute providing for gubernatorial appointment of the Darlington manager was passed after an earlier act of the same year, which vested the power of selecting the manager directly in the hands of the county legislative delegation, was invalidated by the circuit court as violating the principle of separation of powers.

[26] Howard M. Kline, note in *National Municipal Review*, Vol. 30, pp. 303–304 (May, 1941); Elwyn A. Mauck, notes in *ibid.*, pp. 304, 658 (May, Nov., 1941); H. M. Olmsted, note in *ibid.*, p. 716 (Dec., 1941).

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As in the preceding year, more progress in actual adoption of manager government was made at the town than at the county level. Manager charters were reported to have been adopted by popular vote by the Maine towns of Castle Hill, Corinna, Danforth, Island Falls, Mars Hill, Mercer, Merrill, Patten, and Sherman Mills; and by the Vermont towns of Manchester, Northfield, and Poultney. On the other hand, manager proposals were rejected by the towns of Enfield in Connecticut and Canton in Massachusetts, this being Canton's fifth rejection of the plan within twenty-one years.[27]

Personnel Administration. The year's most significant event in the field of personnel administration was the enactment of legislation requiring inauguration of the merit system in all local governmental units in New York State. The New York constitution since 1894 has required that appointments and promotions in the local services be made according to merit and fitness, to be ascertained, as far as possible, by examination. This provision, however, was interpreted by the state civil service commission to mean that the merit system was to be extended as the commission deemed practicable. Actually, extension was slow, with many local units remaining outside the merit system. A few years ago, the court of appeals held that public employment contracts made without compliance with the constitutional provision were invalid; and it was as a result of this decision that the 1941 statute was passed. Under the new law, each county may select, by action of its board of supervisors after public hearing, any of the three types of civil service administration already in operation in the state: (1) by a three-member county civil service commission; (2) by a county personnel officer; or (3) by the state civil service commission. Any county failing to make a selection by July 1, 1942, automatically comes under the jurisdiction of the state commission. The merit system is to become effective in each county not later than July 1, 1943; and after July 1, 1944, counties may, at their option, change from one form of civil service administration to another. The five counties within New York City are to remain under the jurisdiction of the state civil service commission.[28]

No county outside New York State adopted the merit system in 1941.[29] However, laws were passed providing optional civil service systems for the counties of St. Louis (Duluth) and Ramsey (St. Paul) in Minnesota, and for Wayne county (Detroit), Michigan. In each instance the provisions

[27] *City Managers' News Letter* (International City Managers' Association, Chicago), Jan. 1, 1942; H. M. Olmsted, notes in *National Municipal Review*, Vol. 30, pp. 221–222, 289, 436 (Apr., May, July, 1941).

[28] *Laws of New York*, 1941, ch. 885; Morton Yarmon, "New York State Extends Merit System," *National Municipal Review*, Vol. 30, pp. 253–257, 274 (May, 1941).

[29] James M. Mitchell, "Personnel Developments in 1941," *Municipal Year Book*, 1942, pp. 219–223.

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of the law may be adopted by popular vote, the question of adoption being submitted by resolution of the county board.[30] Each law provides for a three-member civil service commission appointed by the county board, and for a civil service director or administrator appointed on the basis of competitive examination. Ramsey county may, however, instead of appointing an administrator, contract with the city council of St. Paul for the services of the city civil service bureau in administering the county civil service system.

Several states, actuated by federal-aid requirements under the Social Security Act, established merit systems for county welfare departments or modified systems previously established.[31] New Mexico placed county health personnel under merit system rules to be adopted by the state board of health in conformity to federal requirements.[32] A Minnesota law applicable to Hennepin county (Minneapolis) provided that employees in the sheriff's office, after six months of continuous employment, may be suspended or discharged only for one or more of five specified causes, and then after filing of written charges and a hearing thereon before the sheriff.[33] Pennsylvania required that first-class townships employing three or more policemen observe merit principles in the appointment, promotion, and removal of police personnel. Counties of the fourth and fifth classes in Pennsylvania were authorized to establish retirement systems for their employees, while an earlier act providing a retirement system for counties of the third class was amended to cover employees of various county districts and authorities as well as those of the county proper. North Dakota placed elective county officials under the provisions of the state workmen's compensation act.[34]

III. FUNCTIONS

New Functions. Legislative sessions of the year were prolific in the production of acts conferring upon counties power to perform new functions. These laws will be considered in several groups, as they relate, respectively, to housing and public works, health and recreation, agriculture and conservation, planning and zoning, civilian defense, or the promotion of local prosperity through expenditures for advertising.

[30] *Public Acts of Michigan*, 1941, no. 370; *Session Laws of Minnesota*, 1941, chs. 423, 513. The respective county boards of all three counties have provided for submission of the question at the general election in November, 1942.

[31] *Laws of Illinois*, 1941, Vol. I, p. 493; *Session Laws of Minnesota*, 1941, ch. 476; *Public Laws of North Carolina*, 1941, ch. 270; *Oregon Laws*, 1941, ch. 138.

[32] *Laws of New Mexico*, 1941, ch. 97.

[33] *Session Laws of Minnesota*, 1941, ch. 385. Orders of the sheriff for suspension or dismissal are subject to review by the district court.

[34] *Laws of North Dakota*, 1941, ch. 303; *Laws of Pennsylvania*, 1941, nos. 45, 136, 296, 313.

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In the field of housing legislation, as it concerns county government, three rather distinct trends were evidenced by: (1) the continued enactment of legislation authorizing creation of county housing authorities; (2) increased emphasis upon housing of a distinctly rural character; and (3) the granting of power to county authorities to participate in defense housing. Several states—including Florida, Montana, North Carolina, and West Virginia[35]—enacted new statutes, or amended existing laws providing for city authorities, to authorize the establishment of county housing authorities; and the actual organization of such authorities continued apace. By June 30, 1941, a total of 259 county or parish authorities in 15 states had been established to construct and manage rural housing with federal aid. In addition, 17 regional authorities, embracing 93 counties and parishes in Florida, North Carolina, and Louisiana, had been set up to engage in rural housing operations.[36]

In contrast to earlier laws designed primarily to foster housing in urban or suburban areas, most of the 1941 acts specifically conferred upon county housing authorities power to rent or sell dwellings to farmers of low income. At least one state from among those having previously provided for county housing authorities, viz., Washington, amended its law to confer the additional power of providing farm housing.[37] The various statutory definitions of "low-income farmer" are of substantially similar import, and that of Washington may be taken as typical. In that state the term is defined to mean persons or families who: (1) live under unsafe or insanitary housing conditions; (2) derive their principal income from operating or working upon a farm; and (3) have had an average net income for the past three years below the amount determined by the housing authority to be necessary to enable them to obtain decent, safe, and sanitary housing. Unlike urban housing projects, rural projects consist of individual dwelling units scattered throughout the areas served by county or regional authorities. Since, according to federal surveys, two out of three farm families in the United States are inadequately housed, the task of providing healthful farm housing assumes vast proportions. Nevertheless, by the end of the year under consideration, county and regional housing authorities in substantial number were making a real start on rural housing programs.[38]

Several states enacted legislation empowering county and other local

[35] *General Acts and Resolutions of Florida*, 1941, p. 67; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 153; *Public Laws of North Carolina*, 1941, ch. 78; *Acts of West Virginia*, 1941, ch. 49.

[36] *Second Annual Report of the Federal Works Agency* (1941), pp. 165–166.

[37] *Session Laws of Washington*, 1941, ch. 69.

[38] *Second Annual Report of the Federal Works Agency* (1941), pp. 164–166. See *infra*, "Federal-Local Relations."

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housing authorities to provide safe and sanitary dwelling facilities for persons engaged in national defense activities.[39] Most of these laws, in defining "persons engaged in national defense activities," follow substantially the definition set forth in the Lanham Act of 1940[40] by which Congress made additional federal funds available to local housing authorities for defense housing. The federal act defines the term to include: (1) enlisted men in the naval or military services of the United States;[41] (2) employees of the Navy and War Departments assigned to duty at naval or military reservations, posts, or bases; and (3) workers engaged in industries connected with and essential to the national defense.

County powers in the field of public works were enlarged in several instances. Illinois and Wyoming authorized counties to establish and operate airports. County boards in Kansas were empowered, in drought emergencies, to purchase pumping equipment and operate drought relief wells. Bernalillo county (Albuquerque), New Mexico, was authorized to construct and maintain a county auditorium.[42]

County health and recreational activities continued to increase, and in several instances the statutory powers of counties to provide facilities in these fields were enlarged. The number of counties served by full-time health units was reported to have increased, since 1935, from 762 to 1,577.[43] Florida counties, and the county of Alamance in North Carolina, were empowered to establish and maintain public hospitals. The Delaware county of New Castle was authorized to provide ambulance service. Oregon provided that county lands may be set aside as forest, park, and recreational areas. St. Louis county, Missouri, was granted limited authority to acquire and maintain land for parks and playgrounds. Arkansas counties were empowered to operate recreation and playground programs.[44]

Several states enacted legislation under which counties will be able, in various ways, to foster agriculture and the conservation of natural resources. Colorado counties were empowered to engage in agricultural re-

[39] *General Acts and Resolutions of Florida*, 1941, p. 77; *Public Laws of North Carolina*, 1941, ch. 63; *Session Laws of Washington*, 1941, ch. 54; *Acts of West Virginia*, 1941, ch. 50. The acts provide that no projects may be initiated thereunder later than December 31, 1943. [40] 54 *Stat. at L.* 1125.

[41] A 1942 amendment broadened this coverage to include commissioned officers of the lower ranks. *Public No. 409, 77th Congress.*

[42] *Laws of Illinois*, 1941, Vol. I, p. 463; *Kansas Session Laws*, 1941, ch. 6; *Laws of New Mexico*, 1941, ch. 101; *Session Laws of Wyoming*, 1941, ch. 35.

[43] Ira V. Hiscock, "Public Health Developments in 1941," *Municipal Year Book*, 1942, pp. 391–393.

[44] *Acts of Arkansas*, 1941, no. 291; *Laws of Delaware*, 1941, ch. 98; *General Acts and Resolutions of Florida*, 1941, p. 2386; *Laws of Missouri*, 1941, p. 480; *Public-Local Laws of North Carolina*, 1941, ch. 392; *Oregon Laws*, 1941, ch. 38.

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search work, and for that purpose to acquire land and laboratory facilities and employ necessary personnel. Texas counties were authorized to construct agricultural experiment stations, and to lease such stations to the state or to any agency of the federal government. Nebraska authorized the expenditure of county funds for the control and eradication of insect pests and plant diseases, and provided that counties may coöperate in control programs with appropriate state agencies or the United States Department of Agriculture. Florida provided that counties may acquire and protect forest lands; and Tennessee counties were authorized to coöperate with the state government in protecting forests from fire.[45] Wisconsin counties were empowered, in disposing of county-held real estate, to restrict the right of the grantee to cut timber from forested areas. Counties in Wisconsin's cut-over regions have acquired a great deal of land through tax-delinquency, and the 1941 act represents an experiment in controlling land-use and forestry practices thereon through deed restrictions.[46] Also deserving of mention as a conservation measure is an Idaho statute empowering counties to operate fish hatcheries.[47]

Among the county zoning statutes enacted during the year, those relating to airport zoning were most numerous. States which conferred upon counties[48] power to impose zoning regulations for the protection of approaches to public airports, or which broadened existing authority of that nature, include Illinois, New Mexico, North Carolina, Tennessee, Wisconsin, and Wyoming.[49] The general purpose of these acts is to permit regulation of overhead power lines, trees, buildings, smokestacks, and other structures which might create hazards by obstructing the aërial approaches to the airport or by interfering with radio communication between airport and aircraft. The new zoning powers conferred by the Tennessee statute apply to areas adjacent or in proximity to federal-aid highways or public parks as well as to those in the vicinity of airports. Wisconsin, in addition to enlarging regulatory authority in airport areas, provided that counties

[45] *Laws of Colorado*, 1941, ch. 3; *General Acts and Resolutions of Florida*, 1941, p. 2380; *Session Laws of Nebraska*, 1941, ch. 48; *Public Acts of Tennessee*, 1941, ch. 106; *General and Special Laws of Texas*, 1941, p. 703.

[46] *Wisconsin Session Laws*, 1941, ch. 5; Robert M. Mangan, note in *National Municipal Review*, Vol. 30, pp. 656–657 (Nov., 1941).

[47] *General Laws of Idaho*, 1941, ch. 11.

[48] Massachusetts provided that towns may, in town meeting, adopt airport approach regulations subject to approval by the state aëronautics commission. *Annotated Laws of Massachusetts*, 1941 Supp., ch. 90, secs. 40A–40I.

[49] *Laws of Illinois*, 1941, Vol. I, p. 261; *Laws of New Mexico*, 1941, ch. 171; *Public Laws of North Carolina*, 1941, ch. 250; *Public Acts of Tennessee*, 1941, ch. 86; *Wisconsin Session Laws*, 1941, ch. 195; *Session Laws of Wyoming*, 1941, ch. 110. Wisconsin requires that zoning regulations be approved by the town boards of towns in which affected lands are situated, as well as by the county board.

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may use the power of eminent domain to effect the removal of obstructions existing in such areas prior to adoption of regulatory ordinances.

Several of the enabling statutes follow rather closely the provisions of one or the other of the model airport zoning acts drafted by the Civil Aëronautics Administration and the National Institute of Municipal Law Officers,[50] both of which include counties among the local governmental units upon which zoning powers are to be conferred. The statutes which, like those of Illinois and New Mexico, are modeled after the Civil Aëronautics Commission Act, provide that a designated state agency shall formulate airport approach plans for the various airports, and make it the duty of the local governments to adopt and enforce such zoning regulations as may be necessary to give effect to those plans. On the other hand, statutes such as that of North Carolina, following the model of the law officers' institute, do not provide for this form of state supervision and control, but place zoning power and responsibility directly in the hands of the local authorities. Although most of the zoning acts apply only to publicly-owned airports, some apply to any airport used by the public, whether publicly or privately owned.

In addition to the airport zoning acts, there were a few statutes conferring planning and zoning powers of a more general nature. Oregon provided that county boards may zone unincorporated areas in coöperation with the state board of forestry. The counties of Ohio were empowered to regulate the erection, repair, and maintenance of non-farm residential buildings in unincorporated areas. Special acts authorized the establishment of planning commissions in certain counties in Missouri and Minnesota. Florida conferred zoning powers upon the counties of Martin and Indian River, and authorized Leon county to regulate billboards along highways.[51]

Although many of the functions already discussed relate directly or indirectly to national defense, special mention should be made of the work of county defense councils.[52] Duties assigned to such councils by the various statutes include coöperation with national and state agencies and with other local councils in carrying on defense activities; investigation of transportation, manufacturing, housing, fire protection, and other matters related to the defense effort; and recommendation of legislation designed to further national defense aims. The state statutes commonly confer

[50] Texts of the model acts may be found in *Journal of Air Law and Commerce*, Vol. 12, pp. 176–188 (Apr., 1941).

[51] *Special Acts of Florida*, 1941, pp. 901, 999, 1108; *Session Laws of Minnesota*, 1941, ch. 210; *Laws of Missouri*, 1941, pp. 465, 481; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 673; *Oregon Laws*, 1941, ch. 360.

[52] See *supra*, "New Offices."

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upon local defense councils, in so far as they are applicable, the same powers within their respective jurisdictions as are vested in the state council with reference to the state at large. In practice, the local councils are performing a variety of functions, such as the promotion of salvage programs, the training of auxiliary policemen and firemen, and the instruction of civilians in methods of controlling incendiary fires.

State legislatures continued to authorize counties to spend public funds, in limited amounts, for advertising purposes. Tennessee counties were empowered to make expenditures for the purpose of advertising their respective points of interest; Texas authorized any county of more than 100,000 population to make appropriations "for the purpose of advertising and promoting the growth and development of such county"; and Wake county, North Carolina, was empowered to make annual appropriations for advertising "its industrial opportunities, business facilities, and places of beauty and interest."[53]

Viewed as a whole, the list of new county services clearly reflects a nation girding itself for approaching conflict. Housing of military personnel and defense workers, construction of airports, public-health work, promotion of agriculture, conservation of forests, civilian defense—all of these activities are directly related to a defense economy. Current delegation of such functions to counties operates as legislative recognition of the continuing vitality of county government, and may well presage for the county a significant rôle in the national war and defense program.

Functional Consolidation. Many states enacted legislation authorizing local units of government to coöperate with each other in the performance of governmental services. While a few of these acts provided for the creation of special districts, the contract method of coöperation was distinctly prevalent. An amendment was proposed to the Georgia constitution which, if approved by the voters, will empower counties and other local units to contract with each other, for periods not exceeding thirty years, for the use of their respective facilities or services. Another instance of legislative action which contemplates coöperative performance of local services generally is seen in the statute establishing a form of manager government for Hamilton county, Tennessee. That act contains a broad provision authorizing the county council to contract with municipalities and other taxing units in the county for the consolidation of duplicating services and functions.[54]

As in former years, the greater part of the enabling legislation related to particular functions. No less than six states—California, Florida, Idaho, Montana, Oregon, and Washington—authorized counties to coöperate

[53] *Public-Local Laws of North Carolina*, 1941, ch. 390; *Public Acts of Tennessee*, 1941, ch. 21; *General and Special Laws of Texas*, 1941, p. 905.

[54] *Acts and Resolutions of Georgia*, 1941, p. 50; *Private Acts of Tennessee*, 1941, ch. 156.

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with municipalities in the construction and maintenance of airports. Some of these states also empowered adjoining counties to coöperate with each other for this purpose. Illinois provided that two or more contiguous counties, or contiguous parts thereof, may incorporate as an aviation district for providing airport facilities.[55] Florida and North Carolina authorized the formation of regional housing authorities embracing two or more counties; and West Virginia provided that any two or more local housing authorities, county or city, may join or coöperate in the exercise of their powers. Ohio enabled any county to contract with any municipality therein for the purpose of providing that either unit shall administer and enforce the building regulations of the other. Township boards in Michigan were empowered to enter into contracts with municipalities or water districts to secure water for domestic use and fire protection in rural areas. Kansas, which for some years has permitted entire counties to abandon township road maintenance in favor of the county-unit plan, provided that henceforth county boards may, at the request of individual townships, maintain township roads therein at township expense. California enabled contiguous counties in certain coastal areas to join in the formation of harbor districts.[56]

Arkansas counties, cities, towns, and school districts were authorized to enter into coöperative agreements for the operation of programs of public recreation and playgrounds. An Iowa statute provided that county boards of adjoining counties may enter into agreements whereby indigent residents of one county will be supported in the county home of the other. Contiguous townships in any Ohio county, and any two or more of a designated group of New York towns, were empowered to coöperate in the establishment of joint hospital districts. County boards in Colorado were authorized to enter into coöperative agreements for carrying on agricultural research. California provided that the board of supervisors of any county having no county agricultural commissioner may, with the consent of the board of supervisors of an adjoining county, employ the commissioner of such adjoining county to have charge of its department of agriculture.[57] North Carolina, by special acts, authorized various coun-

[55] *Statutes of California*, 1941, ch. 265; *General Acts and Resolutions of Florida*, 1941, p. 2316; *General Laws of Idaho*, 1941, ch. 103; *Laws of Illinois*, 1941, Vol. I, p. 254; *Laws, Resolutions, and Memorials of Montana*, 1941, ch. 54; *Oregon Laws*, 1941, ch. 189; *Session Laws of Washington*, 1941, ch. 21.

[56] *Statutes of California*, 1941, ch. 1117; *General Acts and Resolutions of Florida*, 1941, p. 67; *Kansas Session Laws*, 1941, ch. 319; *Public Acts of Michigan*, 1941, no. 47 (see also *ibid.*, no. 107); *Public Laws of North Carolina*, 1941, ch. 78; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 673; *Acts of West Virginia*, 1941, ch. 49.

[57] *Acts of Arkansas*, 1941, no. 291; *Statutes of California*, 1941, ch. 1077; *Laws of Colorado*, 1941, ch. 3; *Acts and Joint Resolutions of Iowa*, 1941, ch. 151; *Laws of New York*, 1941, ch. 741; *Legislative Acts and Joint Resolutions of Ohio*, 1941, p. 354.

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ties to join with designated cities therein in the administration of specified activities.[58]

Interest continued in coöperative performance of the auxiliary administrative services of personnel and purchasing. The statute providing an optional civil service system for Wayne county, Michigan, would enable that county to make the services of its personnel-administration facilities available to adjoining counties under contract. Minnesota's optional civil service law for Ramsey county empowers the county to contract with St. Paul for the services of the city's civil service bureau. New York provided that, in counties having county civil service commissions, cites may elect to have their merit systems administered by the county commission.[59] Pennsylvania amended an act of 1937 authorizing joint purchasing by certain local governmental units, to extend its provisions to second-class counties (Allegheny), cities of the second class, and institution districts.[60]

IV. FINANCE

County and town budgeting made some progress during the year. Wisconsin's law requiring local budgets was amended to include counties having a population of less than 300,000; and New York's local budget system was extended to all towns.[61] Special legislative acts established budget systems in Rensselaer county in New York, St. Louis county in Minnesota, and five Tennessee counties.[62] The law providing a manager system for Hamilton county in the latter state requires the manager to prepare an annual budget; as do the optional manager laws enacted in North Dakota.[63] Nebraska's county budget law, which became effective in 1938, was reported to be operating in such manner as to place counties on a sound business basis, improve the public service, and reduce costs to taxpayers.[64]

The Washington legislature provided for submitting to popular refer-

[58] For example, *Public-Local Laws of North Carolina*, 1941, ch. 1 (recreation system by New Hanover county and the city of Wilmington), 230 (tax collection by Forsyth county and city of Winston-Salem), 262 (police radio and identification bureau by Buncombe county and city of Asheville).

[59] *Public Acts of Michigan*, 1941, no. 370; *Session Laws of Minnesota*, 1941, ch. 513; *Laws of New York*, 1941, ch. 885. See *supra*, "Personnel Administration."

[60] *Laws of Pennsylvania*, 1941, no. 224.

[61] *Laws of New York*, 1941, ch. 601; *Wisconsin Session Laws*, 1941, ch. 221.

[62] *Session Laws of Minnesota*, 1941, ch. 118; *Laws of New York*, 1941, ch. 917; *Private Acts of Tennessee*, 1941, chs. 124 (Chester), 272 (Dyer), 375 (Overton), 377 (Jackson), 441 (Hancock).

[63] *Laws of North Dakota*, 1941, chs. 131, 132; *Private Acts of Tennessee*, 1941, ch. 156. See *supra*, "County and Town Executives"; *infra*, "Optional Charters and Home Rule."

[64] W. L. Pierpoint, note in *National Municipal Review*, Vol. 30, pp. 52–53 (Jan., 1941).

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endum in 1942 a statute imposing a 40-mill over-all rate limit on property taxes, with the provision that property shall be assessed at 50 per cent of its true value. Under the proposed statute, counties would be made subject to a 10-mill limit within the over-all maximum. This maximum county rate, however, like the maximum rates prescribed for other classes of local units, might be exceeded by three-fifths vote at a special referendum election. Pennsylvania inaugurated an instalment system for payment of delinquent taxes, and abated penalties and interest thereon. North Dakota authorized county boards to exchange lands acquired for taxes for other lands in the county.[65]

Centralized purchasing agencies were established or authorized in the counties of Dyer, Putnam, and Tipton in Tennessee; Vanderburgh in Indiana; and Fulton in Georgia. Under the statute establishing a manager form of government in Darlington county, South Carolina, supplies and equipment will be purchased by the manager under regulations prescribed by an advisory commission. North Dakota's two optional manager laws provide for centralized purchasing. Under the straight manager form, the director of finance, and under the "short" form of managership the manager himself, is to act as or appoint a county purchasing agent.[66]

V. OPTIONAL CHARTERS AND HOME RULE

The most comprehensive legislation of the year concerning optional forms of county government was enacted by North Dakota. A constitutional amendment ratified by the voters of that state in 1940 makes it the duty of the legislature to provide optional forms of county government, at least one of which shall provide for a county manager. In obedience to this mandate, the 1941 legislative session enacted a series of three optional-government statutes providing a like number of alternative forms of county governmental organization. These forms are officially designated: (1) the Consolidated Office Form; (2) the County Manager Form; and (3) the Short Form of County Managership.[67] Every county in the state is free to retain its existing form of government or to adopt any of the three new forms. A proposal to adopt the Consolidated Office Form is initiated by petition signed by 40 per cent of the number of voters in the

[65] *Laws of North Dakota*, 1941, ch. 126; *Laws of Pennsylvania*, 1941, nos. 17, 18; *Session Laws of Washington*, 1941, ch. 176.

[66] *Acts and Resolutions of Georgia*, 1941, p. 408; *Laws of Indiana*, 1941, ch. 23; *Laws of North Dakota*, 1941, chs. 131, 132; *Acts and Joint Resolutions of South Carolina*, 1941, p. 54; *Private Acts of Tennessee*, 1941, chs. 273, 373, 518.

[67] *Laws of North Dakota*, 1941, chs. 130, 131, 132. Further discussion of the statutory provisions may be found in Ernest Engelbert, "A Decade of County Government Reorganization in North Dakota," in this REVIEW, Vol. 36, pp. 508–515. See also Elwyn A. Mauck, note in *National Municipal Review*, Vol. 30, pp. 301–303 (May, 1941); *supra*, "Office Consolidation."

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last gubernatorial election. The manager plans may be initiated either by petition of 35 per cent of the number of voters in the gubernatorial election or by majority vote of the county board. Adoption of any plan requires a 55 per cent affirmative vote of those voting on the question in the primary or general election at which the question is submitted.

The Consolidated Office Form provides for a substantial degree of administrative centralization, though less than do the manager plans. The county board becomes the sole elective agency of the county and appoints the auditor, state's attorney, sheriff, treasurer, superintendent of schools, coroner, four justices of the peace, and four constables. The auditor is designated as "chief administrative officer of the county" and, in addition to his duties as auditor, serves *ex officio* as county judge, register of deeds, and clerk of the district court. The offices of public administrator and county surveyor are abolished.

Under the County Manager Form, the county board appoints a full-time manager who serves for an indefinite term and is removable at the pleasure of the board. The manager is vested with the usual managerial powers, including appointment of department heads and subordinate personnel, supervision of county activities, and preparation of the budget. Departments of finance, public works, and public welfare are established by the statute; and additional departments may be created by the county board upon recommendation of the manager. The offices of sheriff, superintendent of schools and county judge continue to be filled by election. Other elective offices are abolished and their duties reassigned.

The Short Form of County Managership differs from the regular county manager form principally in the fact that the departmental set-up is omitted, with the manager being given broad powers over structural organization and staff. The manager is in direct charge of financial administration, public works, and welfare activities. In addition, he is charged with performing the duties of several specified county offices and may, at his discretion, assume the duties of certain others. The county judge and superintendent of schools remain elective.

New York's Desmond-Mailler optional county government law of 1937 was changed to bring its provisions into conformity with state constitutional changes of 1938.[68] Under the amendatory act of 1941, the requirement that adoption of an optional form of government be approved by municipalities within the county, as well as by the county as a whole, applies only when a transfer of functions as between the county and municipalities is involved. Where there is no transfer of functions, an

[68] *Laws of New York*, 1941, ch. 190; G. H. H., Jr., note in *National Municipal Review*, Vol. 30, pp. 372–373 (June, 1941). See this REVIEW, Vol. 32, p. 952; Vol. 33, pp. 1068–1069.

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alternative form may be adopted by simple county-wide majority vote.[69] A proposed amendment to Nebraska's constitution would enable the legislature to provide an optional county-manager law.[70] The Wisconsin legislature, on the other hand, failed to give second legislative approval to a proposed constitutional amendment[71] which would have abolished the requirement of uniformity in county government, permitting a statutory classification of counties and the provision of optional systems of government.

In Ohio, the voters of Cuyahoga county (Cleveland) again defeated a proposal to elect a commission to draft a new charter under the constitutional home-rule amendment of 1933. No Ohio county has yet been able to draft, under that amendment, a charter capable of securing approval of both the voters and the courts; nor has the state legislature yet provided optional forms of county government as authorized by the amendment.[72]

VI. INTERGOVERNMENTAL RELATIONS

State-Local Relations. There were no new developments of major significance in state-local relations. In general, the trend toward increased state control and assistance continued, though there was less legislation pertaining to the state-local relationship than in most legislative years. New Jersey increased the authority of her local government board with respect to governmental units in unsound financial condition. Additional powers conferred upon the state agency over local governments in serious financial straits include those of supervising the assessment and collection of property taxes, and requiring the selection of a local administrator of finance who, under the board's direction, may exercise broad supervisory authority over the unit concerned.[73] State oversight of local budgeting was widespread, no fewer than thirty-seven states being reported as exercising some degree of supervision over county budgets.[74]

The states which provided for local defense councils generally made it the duty of such local organizations to coöperate with the state council of

[69] Another New York optional county government statute—the Fearon-Parsons law—was similarly amended in 1940. See this REVIEW, Vol. 35, p. 1114.

[70] *Session Laws of Nebraska*, 1941, ch. 46. See *supra*, "County and Town Executives."

[71] See this REVIEW, Vol. 34, p. 1162.

[72] Elwyn A. Mauck, notes in *National Municipal Review*, Vol. 30, pp. 177, 658 (Mar., Nov., 1941). See this REVIEW, Vol. 31, p. 907; Vol. 34, pp. 1162–1163.

[73] John H. Marion, "State Supervision in New Jersey over Municipalities in Unsound Financial Condition," in this REVIEW, Vol. 36, pp. 502–508 (June, 1942). As to general powers of the local government board, see this REVIEW, Vol. 33, pp. 1065–1066; Vol. 35, p. 1117.

[74] A. E. Buck, "Municipal Budgeting," *Municipal Year Book*, 1942, pp. 271–274.

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defense. Some of the airport zoning statutes made it the duty of counties and other local units, in regulating airport approaches, to give effect to plans formulated by state agencies.[75] New York, in requiring inauguration of the merit system in all local governmental units, provided that the state civil service commission shall, upon request, prepare examinations and establish eligible registers for, and supply technical advice and assistance to, local civil service commissions.[76] Washington established a state division of flood control empowered to supervise the work of local flood control engineers in the various counties; and Tennessee empowered counties to coöperate with the state forestry division in providing fire protection for forests.[77]

Federal-Local Relations. Most of the developments in federal-local relationships concerned matters related directly or indirectly to problems of defense. Washington and Iowa empowered counties to convey county property to the federal government for defense purposes; and Indiana authorized township trustees to make similar conveyance of school property. Missouri provided that counties and other political subdivisions in certain defense areas may contract to operate for the federal government sewerage, water-supply, and hospital facilities serving military establishments. Counties in Arizona, Idaho, Oregon, and Washington were empowered to enter into agreements with federal agencies for coöperation in the construction and maintenance of airports. Oklahoma and Texas provided that counties may acquire airport facilities and lease the same to the federal government. Sedgwick county (Wichita), Kansas, was authorized to acquire and donate to the federal government land for aircraft supply and repair depots.[78] Congressional enactments during the year provided additional federal funds in aid of the construction and improvement of publicly-owned airports and landing fields in defense areas.[79] The several state statutes providing for county defense councils[80] envisaged coöperation of the local councils with the federal Office of Civilian Defense as well as with the respective state councils. In practice, the federal agency has set up standards for the training and certification of local defense

[75] See *supra*, "New Offices," "New Functions."

[76] *Laws of New York*, 1941, ch. 885. See *supra*, "Personnel Administration."

[77] *Public Acts of Tennessee*, 1941, ch. 106; *Session Laws of Washington*, 1941, ch. 204.

[78] *Acts, Memorials, and Resolutions of Arizona*, 1941, ch. 5; *General Laws of Idaho*, 1941, ch. 103; *Laws of Indiana*, 1941, ch. 21; *Acts and Joint Resolutions of Iowa*, 1941, ch. 194; *Kansas Session Laws*, 1941, ch. 16; *Laws of Missouri*, 1941, p. 493; *Harlow's Session Laws of Oklahoma*, 1941, p. 60; *Oregon Laws*, 1941, ch. 189; *General and Special Laws of Texas*, 1941, p. 196; *Session Laws of Washington*, 1941, chs. 21, 227.

[79] See Roy H. Owsley, "Federal-City Relations in 1941," *Municipal Year Book*, 1942, pp. 204–216.

[80] See *supra*, "New Offices."

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personnel; and, through the state councils, supplied the local organizations with handbooks and other instructional literature.

Federal subsidization of local housing continued, with growing emphasis upon farm housing. By June 30, 1941, the United States Housing Authority had entered into actual loan contracts with 32 county housing authorities for the construction of 2,820 farm dwellings, while plans and the earmarking of federal funds were under way for a much more extensive program.[81] "Although its limited funds permit only a modest beginning, the USHA through its rural housing program is pointing a way to the rehousing of the several million American farm families now living in rural slums."[82]

There was a continuation of the now well-recognized tendency toward increased federal-local coöperation in matters relating to agriculture and conservation. Nebraska empowered counties to coöperate with the federal government in controlling insect pests and plant diseases; Texas provided that agricultural experiment stations constructed by counties might be leased to federal agencies; and Colorado authorized counties to coöperate with federal research agencies in agricultural research work.[83] Local soil conservation districts continued to receive federal assistance, the United States Department of Agriculture having entered into memoranda of understanding with 650 such districts by June 15, 1942.[84]

Problems arising from the exemption of United States property from local tax jurisdiction continued to receive legislative attention. Counties of Kansas, Michigan, and Missouri were authorized to enter into agreements with the United States, on behalf of the counties themselves and political subdivisions therein, whereby the federal government would make payments in lieu of taxes for local governmental services rendered to federal resettlement and rural rehabilitation projects. Montana's legislature, pointing out that exemption of national forests and other nationally-owned lands from state and local taxes has resulted in several counties of that state in oppressive taxation of privately-owned property, memorialized Congress to enact corrective legislation.[85]

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[81] *Second Annual Report of the Federal Works Agency* (1941), pp. 164–166, 394–395. [82] *Ibid.*, p. 166. See *supra*, "New Functions."

[83] *Laws of Colorado*, 1941, ch. 3; *Session Laws of Nebraska*, 1941, ch. 48; *General and Special Laws of Texas*, 1941, p. 703. See *supra*, "New Functions."

[84] Data supplied by Soil Conservation Service, U. S. Department of Agriculture. See *supra*, "Areas."

[85] *Kansas Session Laws*, 1941, ch. 202; *Public Acts of Michigan*, 1941, no. 318; *Laws of Missouri*, 1941, p. 490; *Laws, Resolutions, and Memorials of Montana*, 1941, p. 447.

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The Community of the Parliaments of the British Commonwealth. When Nazi planes, on the night of May 10, 1941, bombed the rooms of the Empire Parliamentary Association in Westminster Hall in the Houses of Parliament, they struck at a central institution of the British Empire. Fire destroyed most of its records. Fire-blackened, water-soaked documents, annual reports, verbatim reports of annual meetings and of sessions of the Empire Parliamentary Conference, and other documents, all bearing marks of that night, have formed the basis of this article, which incorporates also the experience gained from personal contacts with the Association in most parts of the Empire, including the addressing of meetings of members in the parliaments of each of the Oversea Dominions and attendance at meetings of the Empire Parliamentary Conference.

The Association originated in a suggestion made in 1911 by the Rt. Hon. L. S. Amery, M.P., who has played a greater part in its history than any other man apart from its Secretary, Sir Howard d'Egville. Mr. Amery proposed that "His Majesty's faithful Commons from each part of the Empire should, by delegations of their Members, be present at the Coronation"[1] of 1911. From this "historic assembly of Members of the Imperial Parliament and Members of the Parliaments of the Dominions," as the constitution of the Association records, was born the permanent institution. Sir Howard d'Egville is named in the constitution as "the founder and organiser of the Association," and his contribution in the thirty-one years of its existence makes him one of the real founders of the modern British Commonwealth of Nations.

For a generation, the Association has been "the centre of the Parliamentary intercourse of the Empire."[2] If it is unknown to the British statute-book, so were until 1937 the cabinet, the prime minister, the leader of the Opposition, and the political party. The building in which its headquarters are situated—Westminster Hall, the Hall of William Rufus and of Simon de Montfort's Parliament of 1265—is "sacred ground . . . the nursery of the English Common Law and the nursery of our Parliament."[3] Here for a generation the Association, acting through its branches in all parts of the Empire, has carried out its task of keeping "the Parliamentary tradition united and alive in all the Dominions under the British Crown."[4]

[1] *Empire Parliamentary Conference, Visit to the United Kingdom, Jubilee Year 1935, E.P.A.* (London, 1935), p. 101.

[2] *Annual Report of the Executive Committee of the Empire Parliamentary Association (United Kingdom Branch) for the Year 1917–18,* p. 3. (Hereafter referred to as *A.R.*, 1917–18, etc.)

[3] The Prime Minister (Mr. Stanley Baldwin)—*The Empire Parliamentary Conference . . . Jubilee Year*, 1935, p. 97.

[4] L. S. Amery, *Report of Proceedings at the Annual Meeting of the U.K. Branch, 1919* (hereafter referred to as *A.M.*, 1919, etc.).

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Its great achievement was that it trained men of all parties and parliaments of the Empire to feel: "We are Parliamentarians."[5]

The subtle transformation of an Empire of law and "parchment bonds" into one in which "other forces far more compulsive" (in Winston Churchill's words) are given free play, has been little understood, either by the democracies or by the Axis countries. Both have fastened their attention too exclusively on superficial things such as the weakening of legal ties by the Statute of Westminster. The Empire has been transformed by the process of "bringing together, in harmony and mutual service, the personnel of the Empire"[6]—cabinet ministers, parliamentarians, government officials, and others. The pressure of external danger and revolutionary changes in communication, especially Empire broadcasting, have strengthened the family bonds which are the real secret of the Empire's strength. The peoples of the Empire have become more one people by a process of identification through the person of the King and the symbol of the Crown.[7] Fourteen years ago an ex-Labor prime minister made a forecast which events have not altogether belied: "His Majesty and this Association will be the great bonds of Empire."[8]

The main object of the Empire Parliamentary Association as stated in Article I of its constitution is "the establishment of permanent machinery to provide more ready exchange of information and to facilitate closer understanding and more frequent intercourse between those engaged in the Parliamentary Government of the component parts of the Empire."[9]

The present membership of the Association is 2,822—684 in the United Kingdom and 2,138 in oversea branches. There are 33 branches in 33 parliaments and legislatures of the Empire;[10] and some of the branches have at times included all members of both houses of parliament. Not all are full branches of the Association. An amendment of its constitution in 1924–25 made possible the creation of branches affiliated to the branches of the Association in the United Kingdom or Dominion parliaments. This admitted colonies such as Bermuda (which possess ancient legislatures and

[5] L. S. Amery: *E.P. Conference . . . Jubilee Year*, 1935, p. 101.

[6] *A.M.*, 1915, p. 8.

[7] For an analysis of all these factors, see W. Y. Elliott and H. Duncan Hall (eds.), *British Commonwealth at War* (New York, 1942), Chap. 2.

[8] Ramsay Macdonald, *A.M.*, 1928, p. 9.

[9] *Constitution of the Empire Parliamentary Association*, issued by the United Kingdom Branch, London, p. 5.

[10] The branches are: United Kingdom; Northern Ireland; Isle of Man; Dominion of Canada (and eight affiliated branches in Canadian provinces); Commonwealth of Australia (and six affiliated branches in the Australian state parliaments); New Zealand; South Africa; Eire; India (Central Legislature and Province of Bengal); Southern Rhodesia; Malta; Bahamas; Barbados; Bermuda; Ceylon; Jamaica; Mauritius; British Guiana.

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considerable powers of self-government), as well as the state and provincial parliaments of Australia and Canada.[11]

Like the Empire, the Association has no centralized organs. The branch in the British Parliament is merely a branch equal in status to the Dominion branches. The constitution is an agreed Empire document which can be amended only by common consent.[12] The word "Association" indicates the voluntary character of the organization, and its lack of power to take binding decisions. It is the custom of the Association and the Empire Parliamentary Conference not to adopt resolutions. Yet despite the modesty of its title, it is a far more representative and official body than any organization of parliamentarians that has so far existed on an international scale. It is the only organized and lasting international community of parliamentarians that has ever existed. Though it has become a central institution of a great self-governing Empire, it has avoided publicity so successfully that no account of any kind based on official records of its history and work has hitherto been published.

Membership in the Association is secured automatically without election through membership in a branch. The parliamentary community is extended to past members of Parliament by the provision that they may become "affiliated members" of the Association with limited privileges under conditions determined by a branch. (*Constitution*, Art. IV.)

The Association and its branches are organically related to the parliaments in a number of ways. "The Headquarters of each Branch of the Association are situated in the respective Houses of Parliament";[13] and here, too, are held sessions of the Empire Parliamentary Conference and all other meetings. Permanent officers of the parliaments—the clerks of the two houses—except in the case of the United Kingdom branch, supply the secretariat of the branches; and they come together to form a joint secretariat of the Empire Parliamentary Conference.[14] "The Presidents of the Branches in the Parliaments of the United Kingdom and the Dominions are the Speakers of the two Houses of Parliament and the Vice-Presidents are the Leaders of the Parties in the Parliaments."[15] Speakers and deputy speakers take part in the Empire Parliamentary Conference, and fifteen participated in 1937. The expenses of the branches of the Empire Parliamentary Conference and of the publications of the Association are defrayed in part from grants voted annually by the parliaments.[16]

[11] *Constitution*, Art. V; *A.R.*, 1925–26, p. 22.

[12] *A.M.*, 1925, p. 21. [13] *A.R.*, 1917–18, p. 4.

[14] *Constitution*, p. 3; *Reports of the Proceedings of the Empire Parliamentary Conference*, 1935; 1937. [15] *Constitution*, p. 2.

[16] The close relation of the Association to the parliaments is shown by the fact that the Speaker's chair in the Canadian and Australian parliaments is a gift from the U.K. Branch. The chairs are replicas of the Speaker's chair in the House of Com-

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The Association carries out its object of facilitating "closer understanding and more frequent intercourse" between the parliamentarians of the Empire in various ways. In the words of its constitution, it is "a society of mutual assistance," providing for its members many facilities and privileges.

When a session of the Empire Parliamentary Conference takes place, "the inviting country by a vote of Parliament bears the whole of the expenses not only of hospitality in the country but also of transport, outgoing and return, of each Delegate from each Parliament;"[17] each delegate is thus placed on a footing of complete equality irrespective of his means. Individual members visiting a country receive important travel concessions. Parliamentary privileges mean, in the case of the British Parliament, access to the Dominions' Gallery, the Members' Lobby, the Strangers' Dining and Smoking Rooms, the Library, the Terrace of the House of Commons, and also access to the House of Lords. In Great Britain, visiting members receive invitations to functions open to a select few, the King's Garden Party, the Opening of Parliament, the Prime Minister's Reception, the Trooping of the Colour, and a number of others. The Dominions and India give corresponding privileges where possible. The visiting member meets leading personalities in innumerable social functions. As delegate to a Conference, he is taken to see the historic centers of the country. The Coventry that was blasted in 1940 was the Coventry he had visited in 1935 as a guest of the British Parliament.

The volume of this "continuous stream of intercourse between members of Parliament" has steadily increased. The number of oversea members visiting the British Parliament in various years was: 1912–13, 23; 1913–14, 44; 1914–15, 37; 1917–18, 60, 1921–22, 67; 1925–26, 188; 1929–30, 205 from 18 branches; 1931–32, 259 from 27 branches; 1933–34, 159 from 24 branches; 1935–36, 245 from 24 branches; 1937–38, 328 from 26 branches. The number of members of the U.K. branch visiting the oversea branches each year ran to several score. This constant movement of parliamentarians round the Empire is cumulative in its effect. Almost every member of the parliaments of the Empire has met many visiting parliamentarians and has attended an Empire Parliamentary Conference; and a considerable number of members have visited all the principal parliaments and countries of the Empire.

The Empire Parliamentary Conference was created by the Association.

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mons and contain wood from the famous roof of Westminster Hall. *A.R.* 1919–20; see *A.R.* 1917–18. Stonework from the British Houses of Parliament is incorporated in a number of Oversea Houses of Parliament. *A.M.*, 1938, p. 5.

[17] *A.R.*, 1929–30, p. 4. Also *Proceedings of the Empire Parliamentary Conference*, 1935, p. 256. Travel privileges are usually extended to wives and members of families.

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After the First World War it became a fixed aim of the branches to arrange a full conference of delegations from the parliaments of the Empire "to visit one or other of the countries of the Empire at least once in every two years."[18] A delegation of 16 members of the U.K. branch visited Australia in 1913, as guests of the Australian branch, and conferred *en route* with each of the Dominion branches. The Empire Parliamentary War Conference in London in 1916 was an important event. A British parliamentary delegation visited South Africa in 1924. A full Conference was held in Australia in 1926; "For the first time in the history of the British Empire, Conferences of Representatives of all Parties in all Parliaments upon many matters of vital interest to the nations of the British Commonwealth have taken place in an Oversea country." A similar General Conference was held in Canada in 1928, and several smaller conferences in the thirties were linked with the centenaries of various Australian colonies.[19] There was not a year in the twenty years after the war in which an Empire Parliamentary Conference of some kind, formal or informal, was not going on somewhere in the Empire.

The goal, already foreshadowed in 1920,[20] of an annual assembly of parliaments was furthered by the decision of the Conference of 1935 to hold an informal meeting in London in years in which there were no "plenary sessions of the Empire Parliamentary Conference." An "Informal Meeting of the Empire Parliamentary Conference" was thus held in July, 1936, and again in July, 1939. The first (attended by 15 oversea members from all the Dominions and India, and 66 United Kingdom members) was devoted to "Sea Power and the British Commonwealth of Nations." The second (attended by 24 oversea and 49 United Kingdom members) dealt with "The Coördination of Defense in United Kingdom and Overseas Aspects." Both discussions, of which printed verbatim

[18] *A.R.*, 1929–30, p. 3. An indication of the great interest taken after the war in Empire Parliamentary Conferences was the fact that in 1926 the United Kingdom branch had before it invitations to send delegations to Australia, New Zealand, Canada, South Africa, Newfoundland, Malta, Southern Rhodesia, and India.

[19] *A.R.*, 1926–27, p. 4. See also *ibid.*, 1925–26, p. 25. Minor conferences were held at various times in India, Newfoundland, Malta, South Australia, New South Wales, and New Zealand. Visits by parliamentary delegations from the U.K. Branch were made to various parts of the Empire such as Bermuda, Nigeria, and Tanganyika. A small all-party parliamentary delegation from Canada visited Great Britain in October, 1941, and *en route* had an informal conference with members of the Congress in Washington (*A.R.*, 1939–41). A South African parliamentary delegation came later in the year to London. Further visits of parliamentary delegations are being arranged, and it is hoped to have a session of the plenary Empire Parliamentary Conference.

[20] H. Duncan Hall, *The British Commonwealth of Nations* (1920), pp. 309–10.

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private reports exist,[21] helped to prepare the British democracies to face the coming war.

The culminating point so far in the development of the Empire Parliamentary Conference was reached in the two great conferences in London on the occasion of the King's Jubilee in 1935 and on the eve of the Coronation of 1937. By that time the parliamentary conferences had come to be looked upon, not as sporadic meetings, but as sessions of a permanent institution. The Conference of 1935 was attended by 49 oversea delegates and 103 from the United Kingdom. The delegations, each elected as is customary by its branch, included 16 speakers, premiers, or ministers. The Conference of 1937 was composed of 61 delegates from 28 oversea branches and 134 from the U.K., and the delegations contained 7 premiers, 25 ministers, 15 speakers or deputy speakers, and 8 leaders or deputy leaders of the Opposition, as well as former holders of all these offices.[22] The Conferences, of which printed but unpublished verbatim records exist,[23] covered *inter alia* foreign affairs and defense, shipping and communications, Empire trade, migration, finance, agriculture, and "The Future of Parliamentary Government."

Leaders of the Opposition (who are not present at Imperial Conferences) were delegates to these two Parliamentary Conferences. This helped to ensure greater continuity of policy in defense, foreign affairs, and Empire matters in the various parts of the Empire.[24] A further important constitutional innovation, was the creation of an organic link between the Conference of Parliaments and the Imperial Conference of Governments. For the first time, the Empire Parliamentary Conference was held on the eve of the Imperial Conference, thus linking "the Parliamentary discussions with the subsequent Governmental discussions." The heads of Dominion parliamentary delegations were also delegates to the Imperial Conference; and "practically all of the Ministers of the United Kingdom who presided over or opened discussions at the Parliamentary Conference similarly took part in the proceedings of the Imperial Conference."[25]

Like the Imperial Conference, the Empire Parliamentary Association has been associated from the beginning with important events in the history of the Crown. The relations of parliaments and parliamentarians with the Crown and the person of the king became still closer at the Conferences

[21] *Informal Meeting of the Empire Parliamentary Conference. Report of Proceedings, July, 1936; ibid., July, 1939.* [22] *A.R.*, 1937–38, pp. 2–3.

[23] *Conference of Delegates of the Empire Parliamentary Association from the Legislatures of the Empire, Report of Proceedings, London, 1935; Empire Parliamentary Conference, Report of Proceedings, London, 1937.* [24] *A.M.*, 1938, p. 8.

[25] *A.R.*, 1937–38, p. 10. The British Prime Minister commended this innovation, *A.M.*, 1938, pp. 12–13.

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of 1935 and 1937. "For the first time in history the King-Emperor met and addressed on 7th May, 1937, the elected representatives of his 400,000,000 subjects throughout the world."[26] The occasion was a luncheon in Westminster Hall. Then, as at the similar function in 1935, the Speaker of the House of Commons referred to the Empire as a family. "Today," he said in 1935, "you are more than Sovereign. You are Head of the Family, and of a Nation and an Empire; you have made a Household;" and the loyal toast moved by him was to "The Head of the Family —His Majesty the King."[27] This language, of which the records of Empire gatherings ever since the Colonial Conference of 1887 are full, brings us to those "other forces, far more compulsive," referred to above. The greatest contribution of the Association has been in the sphere of psychological relations. Its leading members realized that what mattered to the Dominions far more than mere legal and constitutional equality was their human status in the family, that oversea members wanted to be treated as adult members of the family council, not to be regarded as strangers or tourists left standing in the cold, but to have free admission as equals into the warmth of the inner circles of the life of the Mother Country. The speaker of the Western Australia House put it thus: "You have no idea how nice it is to feel that there is a spot in the House of Commons where we have a right to come in . . . We come to London as strangers . . . we feel lonely . . . until you come into this room, and then immediately you feel you are in the family."[28]

It was because of such all-important psychological factors as these that Winston Churchill said in 1921: "It is impossible to overrate the importance of a piece of mechanism such as this in the structure of our Imperial organization."[29] Before its creation, he pointed out, visiting statesmen from oversea had gone back with a feeling of frustration and detachment from the family. "Now," he said, "they come here as of right; they take their place in our midst and enter into our affairs." It was an "enormous benefit" for members of the House of Commons to have a "similar recognized official position" when in the Dominions.

Other important results flowing from these massive personal relations between the parliamentarians of the Empire were that these men grew to know the British Commonwealth as a whole, to understand its place in world affairs, and to feel "a wider patriotism" extending to the whole

[26] *Visit and Conference of Delegates of the Empire Parliamentary Association from the Oversea Legislatures of the Empire . . . Coronation, 1937*, E.P.A. (London, 1937), p. 34.

[27] *E.P. Conf. Jubilee Year*, etc.; *ibid., Coronation*, 1937, p. 40.

[28] *Proceedings: Informal Meeting of the E.P. Conference, 1939*, p. 52.

[29] *A.M.*, 1921, p. 7. For similar views expressed by A. J. Balfour and others, see *A.R.*, 1913, pp. 15, 23, 25; *A.M.*, 1917, p. 11.

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Empire.[30] It is only when account is taken of the work of the Association that we can fully explain the extraordinary unanimity of the parliaments of Britain, Canada, Australia, and New Zealand on the necessity of their countries entering the war, and the rapid decision of South Africa to take, and to remain steadfast in, the same course despite the opposition of a substantial minority. The machinery of the Empire worked because parliamentarians, ministers of the Crown, and leading officials had met so early, worked together on common tasks, knew each other so well, and saw each other so often.[31]

Since the United States and the British Commonwealth have an immense common interest in parliamentary institutions and the parliamentary spirit, the importance of close contact between their parliamentarians is obvious.[32] It may well be that in the near future, as a result of discussions begun in Washington, the first inter-parliamentary conference of the English-speaking peoples will become a possibility;[33] and this may open a new chapter in the history of the Empire Parliamentary Association.

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British Raw Materials Mission,
Washington, D. C.

[30] Mr. A. J. Balfour, *A.M.*, 1913, p. 25; *A.M.* 1919, p. 6; See also *A.R.* 1926, p. 8. Study Circles on Foreign Affairs, etc., in the different branches have helped to develop "a common outlook based on common knowledge." Also serving this purpose are the main publications of the Association, jointly financed by the parliaments of the Empire and edited by Sir Howard d'Egville, the *Report on Foreign Affairs* (bi-monthly, now quarterly) and the quarterly *Journal of the Parliaments of the Empire.* The latter contains a summary of all the main parliamentary debates, as well as important bills and acts, for the whole Empire. It is the common organ of the parliamentarians of the Empire, pools knowledge and experience, and promotes uniformity in legislation in matters of national as well as international concern. The issuing of a separate publication containing summaries of the principal debates of Congress has been approved by the Executive Committee of the United Kingdom branch. *A.R.* 1939–41.

[31] See the discussion in the *Informal Meeting of the E.P. Conference*, 1935, pp. 22–23, 26, 36.

[32] See speech by the Lord Chancellor, *A.R.*, 1920–21, p. 10.

[33] See *A.R.*, 1939–41, "Relations with Congress of the U.S.A."

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Democracy and International Organization: The Experience of the League of Nations. The relationship between the domestic political philosophy of a state and its reliability as a member of an organized world community is one of the more hotly debated issues in the present discussion of future international organization.[1] On one side of the argument is the school of thought which holds that international organization can be safely erected only upon a basis of solidly democratic states. On the other side is the school which denies that there is any such close connection between the internal political organization of a state and its external relations. In support of their respective positions, the former school can cite the early American experience and the latter the early Swiss experience.

The League of Nations provides a third source of light for the point at issue. The circumstances attending a state's membership in the League, together with the regularity with which it was represented at the meetings of the policy-forming organs of that institution, viz., the Assembly and the Council,[2] may be taken as a suggestive, though not definitive, index of what may be regarded as an international civic conscience on the part of the members of the international community during the period of the Great Armistice. The purpose of the present discussion is to examine this index in order to learn how the democratic states compared with the non-democratic in the League experience. The answer will be an approach,

[1] Among the more important proposals for world organization which have recently appeared are Alfred M. Bingham, *The United States of Europe* (New York, 1940); W. B. Curry, *The Case for Federal Union* (New York, 1939); Lionel Curtis, *A World Order* (New York, 1939); Hans Heymann, *Plan for Permanent Peace* (New York, 1941); Graeme K. Howard, *America and a New World Order* (New York, 1940); Oscar Newfang, *World Federation* (New York, 1939); Clarence K. Streit, *Union Now* (New York, 1938), and *Union Now with Britain* (New York, 1941); and H. G. Wells, *A New World Order* (New York, 1940).

[2] In this connection, a study of national representation at the meetings of the Council has, however, almost nothing to teach us. The seats at the Council table, cherished by the Great Powers and coveted by the others, were so rarely permitted to remain empty by those entitled to sit in them that one must search long before coming upon an instance. Except for absences in anticipation of, or following on, notice of withdrawal from League membership (Brazil, 1926; Spain, 1926; Japan, 1933; Germany, 1934; Italy, 1936), the only instances of absence from Council sessions are those of Panama, 74th and 80th sessions; Guatemala, 75th session; Ecuador, 95th session; Iran, 106th and 107th sessions; and Peru, 106th and 107th sessions. Also, in the course of the Ethiopian dispute Italy declined to be represented at the second part of the 89th session. (Data for the Council meetings may be found in the *Minutes of the Council*, Sessions I–CVII; beginning with the sixteenth session, the Council Minutes were published in the *Official Journal*. Data for the Assembly meetings may be found in the *Records of the Assembly*, Sessions I–XX; beginning with the fourth session, the Assembly Records were published as special supplements to the *Official Journal*.)

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though only an approach, to the larger question—the relationship between the internal political organization of a state and its support of an organized international community.

The first step is to distinguish the democratic states from the non-democratic. To avoid a fruitless argument as to what democracy is, to escape the question "When is a democracy not a democracy?," we may adopt a simple rule of thumb as sufficient for the purposes of the present discussion. Let us regard as democracies those states which fulfill the following conditions, one positive, the other two negative: (1) they have the forms of parliamentary government; (2) they have suffered from domestic sources neither violent nor unconstitutional changes in government since the outbreak of the first World War,[3] or since their establishment as independent states if that was later; and (3) in the same period, they have not been governed by dictatorial régimes. States which do not fulfill these conditions we will regard simply as non-democracies, without trying to describe them any more closely.

Applying these criteria to the 64 states[4] which flourished during the era of the League of Nations, we find that 19 of the 64 fulfill all three conditions. The 19 include:[5]

Australia	Finland	Norway
Belgium	France	Union of South Africa
Canada	Great Britain	Sweden
Colombia	Ireland	Switzerland
Czechoslovakia	Luxemburg	United States
Denmark	New Zealand	Uruguay.
	Netherlands	

They are the democracies. Four fulfill none of the conditions:

Afghanistan	Iran
Ethiopia	Thailand

Thirty-eight professed the forms of democracy, but after 1914 suffered one or more revolutionary changes in government, or had dictatorial

[3] The choice of 1914 is arbitrary. But time must elapse before democratic institutions can be regarded as stable, as the history of the last twenty years clearly teaches. A people with popular institutions of government sufficiently sound to survive without either dictatorship or violent change in the quarter-century following 1914 may be considered a democracy of some maturity.

[4] Excluded from the study are the diminutive states of Monaco, San Marino, Andorra, and Liechtenstein; the Mohammedan states of Oman, Yeman, Saudi Arabia, and Nepal, which maintained negligible diplomatic relations; such questionable entities as Tibet and "Manchukuo"; as well as the unique Vatican City.

[5] All of the 15 "Atlantic democracies" proposed by Clarence Streit as the nucleus for world union are included, with the addition of Colombia, Czechoslovakia, Luxemburg, and Uruguay. For Streit's discussion of the question of selection for the nucleus, see *Union Now*, Chap. V. His omission of Luxemburg, however, is not explained.

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régimes in some form for longer or shorter periods, or both. They are the following:

Albania	Germany	Paraguay
Argentina	Greece	Peru
Austria	Guatemala	Poland
Bolivia	Haiti	Portugal
Brazil	Honduras	Rumania
Bulgaria	Hungary	Salvador
Chile	Italy	Spain
China	Japan	Turkey
Costa Rica	Latvia	U.S.S.R.
Cuba	Liberia	Venezuela
Dominican Republic	Lithuania	Yugoslavia
Ecuador	Mexico	
Estonia	Nicaragua	
	Panama	

With the four who fulfill none of the conditions, these 38 constitute the non-democracies, a total of 42. The remaining three are better omitted from classification in view of their debatable or very recent statehood. They are:

Egypt India Iraq

Thus, of the 64 states considered, 19 may be regarded as democracies, 42 as non-democracies, and three as not suitable for classification.

The next step is to examine the record of these 19 democracies and 42 non-democracies with respect to membership in the League of Nations and representation at the meetings of the Assembly from the inauguration of the League in 1920 through 1939.[6] But, first, what sort of record is to be taken as evidencing a developed international civic conscience and what kind of record will evidence the contrary? Essential to the former would be (1) an early assumption of responsibility *vis-à-vis* the world community in entering the League, (2) maintenance of membership without withdrawal or notice of withdrawal, and (3) regular representation at the meetings of the Assembly. One or more of the following would be evidence of a poor record: refusal to assume responsibility (i.e., failure to enter the League); long delay in assuming responsibility; early or eventual relinquishment of responsibility (i.e., withdrawal from membership); withdrawal coupled with occasional or repeated absence from Assembly meetings; repeated absence from meetings of the Assembly; aggression, resulting in either withdrawal from the League or expulsion therefrom.

According to the record, the following 37 states early assumed membership in the League, maintained it without notice of withdrawal, and all

[6] The record is not carried beyond 1939, as the fortunes of war robbed later developments, such as France's notification of withdrawal, of their significance for this study.

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the while regularly sent representatives to the sessions of the Assembly. They include 18 democracies and 19 non-democracies, a notably close division.

Democracies		*Non-Democracies*	
Australia	Ireland	Albania	Latvia
Belgium	Luxemburg	Austria	Liberia
Canada	Netherlands	Bulgaria	Lithuania
Colombia	New Zealand	China	Panama
Czecho-slovakia	Norway	Cuba	Poland
Denmark	Union of So. Africa	Estonia	Portugal
Finland	Sweden	Ethiopia	Rumania
France	Switzerland	Greece	Thailand
Great Britain	Uruguay	Haiti	Yugoslavia
		Iran	

It is these 37 that may be regarded as having shown in a high degree an international civic conscience.[7]

Twenty-four states fail to come up to this standard. They are:

Democracies	*Non-Democracies*		
United States	Afghanistan	Ecuador	Nicaragua
	Argentina	Germany	Paraguay
	Bolivia	Guatemala	Peru
	Brazil	Honduras	Salvador
	Chile	Hungary	Spain
	Costa Rica	Italy	Turkey
	Dominican Republic	Japan	U.S.S.R.
		Mexico	Venezuela

Refusal to assume responsibility by entering the League; long delay in entering; early or eventual relinquishment of responsibility by withdrawal from the League; withdrawal coupled with occasional or repeated absence from Assembly meetings; repeated absence from Assembly meetings; or aggression, resulting in either withdrawal or expulsion from the League—these mark the record of the 24.[8] In the whole lot there is only one democracy, the United States.

[7] New Zealand was absent from the extraordinary Assemblies of 1934 and 1935; Ethiopia, from the extraordinary Assembly of 1935, as well as from the extraordinary Assembly of 1937, and thereafter, though, in view of the circumstances, she cannot be held accountable for any but the absence in 1935; Haiti was absent from the extraordinary Assembly of 1926; Liberia, from the extraordinary Assembly of 1937; Panama, from the extraordinary Assembly of 1926 and the ordinary Assembly of 1939; and Thailand, from the extraordinary Assemblies of 1934 and 1935. These derelictions in otherwise clean records are not sufficient to warrant a different classification for the states in question.

[8] Divided into six groups according to their record, the twenty-four appear as follows:

	Democracies	*Non-Democracies*
Group I. Failure to enter the League	United States	.....

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To recapitulate: Of the sixty-one states which admit of classification, 19 (31 per cent) can be classed as democracies, whereas 42 (69 per cent) cannot. But 37 (60 per cent) show themselves, in the light of the criteria adopted, as acting with a sense of responsibility toward the international

Group II. Delayed entrance	Afghanistan (entered 1934) Ecuador (entered 1934) Mexico (entered 1931) Turkey (entered 1932)
Group III. Early or eventual withdrawal	Brazil (notice, 1926) Chile (notice, 1938) Costa Rica (notice, 1924) Hungary (notice, 1939) Venezuela (notice, 1938)
Group IV. Withdrawal coupled with absence from the Assembly	Guatemala (abs. sess. II, IV, XVI, ex. sess. 1934, 1935; notice, 1936) Honduras (abs. sess. I, II, IV–IX, XI–XIV; notice, 1938) Nicaragua (abs. sess. II–IV, ex. sess. March, 1932, 1934; notice, 1936) Peru (abs. sess. II–IX; notice, 1939) Salvador (abs. sess. II, III, XV–XVII, ex. sess. 1934, 1935, 1937; notice, 1937 Spain (abs. sess. VII, VIII, notice, 1939)
Group V. Repeated absence from the Assembly	Argentina (abs. sess. II–XIV) Bolivia (abs. sess. IV–IX) Dominican Republic (abs. all sessions 1932, ex. sess. 1934, all sessions 1935)
Group VI. Agression, with withdrawal or expulsion	Germany (notice, 1933) Italy (notice, 1937) Japan (notice, 1933) Paraguay (notice, 1935) U.S.S.R. (expulsion, 1939)

The following data are needed to complete the picture, but do not warrant changing the classification of any state concerned: Mexico (Group II), for financial reasons, gave notice of withdrawal in 1932, but continued to be represented in the Assembly and, later, on the Council, and finally cancelled her notice before the expiration of the two-year period; Chile (Group III) was absent from the June, 1936, meeting of the XVIth Assembly; Spain (Group IV) gave notice of withdrawal in 1926 following the so-called "Council crisis," but reconsidered before the expiration of the two-year period; Italy (Group VI) was absent from the March meeting of the extraordinary Assembly in 1932; the U.S.S.R. was absent from the XXth Assembly, which convened to consider the invasion of Finland, and which resulted in the expulsion of the U.S.S.R. from the League.

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community, and 24 (40 per cent) as lacking that sense in some degree. The obvious and necessary conclusion is that in the era of the League of Nations there was nothing like a fixed relationship between the domestic political philosophy of the members of the international community and their participation in international organization.

Further study, however, reveals another aspect of the matter. Only 19 (45 per cent) of the 44 non-democracies are to be found in the column of responsible states, whereas 18 (95 per cent) of the democracies are there. To put it the other way: whereas 23 (55 per cent) of the non-democracies have a poor record of coöperation in international organization, only one (5 per cent) of the democracies can be classed with them. So the overwhelming majority of the democracies were to be found on the side of the angels, but of the non-democracies not even half. Thus, while there was no fixed relationship between the presence or absence of democratic procedures and institutions within a state and the presence or absence of a disposition to assume civic responsibility in its foreign relations, the correlation was high.

In summary: If this League experience with respect to democracies and non-democracies has any meaning for international organization at the end of the present war, it indicates a strong probability of coöperation from an overwhelming proportion of the democratic members. Also we must expect coöperation from the non-democracies, taken as a group, to be markedly less than that from the democracies. But we shall err if we expect all non-democracies of the future to be non-coöperative; for it is important to note in the League experience the faithful coöperation of nearly half of this group. To such extent, the history of the League of Nations throws light upon the proposition that only democracies can safely be granted membership in the future world organization.

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The Political Science Curriculum in War-Time: Report of the Committee of the American Political Science Association on War-Time Changes in the Political Science Curriculum.* In these days of war, with democracy facing the greatest challenge in its history, it would be a sad mistake for anyone to assume an attitude of smug complacency. Such would be disastrous if not literally treasonable. Educators, therefore, along with labor and industry, business and agriculture, need to re-examine and revaluate their contribution to the common welfare of the community. Engaged in a war that threatens the very existence of freedom of thought, scholarship, and teaching, educational leaders have an obligation to see that the best possible use is made of one of democracy's outstanding institutions—a free educational system. If the democratic nations fail to train men in good moral and intellectual habits, fail to produce men of keen insight and critical judgment, fail to give us free minds that can join in our struggle toward a better life for all the people of the world, they will have failed in one of their most important obligations to the human race, no matter how the struggle upon the field of battle may end.

We as political scientists, therefore, have, along with all who are engaged in education, a real obligation. But, in our eagerness to do our part, which necessarily means training men and women for direct participation in the military, governmental, and industrial aspects of the war effort, we must be on guard against doing those things which would constitute an abdication of other and very important responsibilities. We must, for example, be constantly watchful lest, under the impact of war, we become mere channels for the dissemination of war propaganda or mere instruments for giving technical training to cogs in a machine that someone else is running. This is in no sense to be taken to mean that the fullest coöperation with the military authorities, with the government, and with industry in the creation of the skills that are needed for the successful prosecution of the war is not highly important. But it is to emphasize that we have a very great responsibility for something more as well. We are fighting to preserve our democracy, and in a democracy education for effective citizenship can never be a waste of time. It is well to remember that there is nothing to be gained by winning the war if we are subsequently to lose the peace. And we cannot win the peace in a democratic manner if our citizens—both in the army and out of the army—have been deprived of

* The Committee on War-Time Changes in the Political Science Curriculum was appointed by President Anderson in response to a request of the United States Office of Education. Members of the Committee are Ethan P. Allen, Office of Civilian Defense; Rodney L. Mott, Colgate University; Kenneth O. Warner, Office of Price Administration; Francis O. Wilcox, Office of the Coördinator of Inter-American Affairs; and E. M. Kirkpatrick (*chairman*), University of Minnesota.

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the kind of training which produces minds that are alert, critical, and informed—minds capable of tackling the great problems involving human values that lie ahead of us, minds that give us some ray of hope in the face of a dark future.

As political scientists, we should remember that our function is to explore the bases of organized social and political life and to teach the principles of organization that we discover. These principles, if they are of any permanent value, are the same in war-time as in peace-time, and, if we have done our duty during peace-time, we will not need to change either our curriculum or our methods in any drastic manner during the emergency of war.

What we need to do in any particular case depends upon the answers that we can give to such questions as the following. Are we succeeding in getting the student to see himself as a part of the vast socio-political complex which is the world of today? Are we stimulating his imagination so that he can see the world as one interrelated whole, in which the problems of geographically or socially remote persons are connected in some fashion with his own? Are we raising questions of goals or ends to be attained? Are we helping in the clarification of problems of right and justice? Are we offering guidance in the formulation of a social and political philosophy adequate to meet the problems created by the turmoil and strife through which we are passing? Are we acquainting the student with facts about political institutions and their operation? Are we making these facts of value by fitting them into a mosaic that embraces not only what is but what ought to be? Are we aiding in making it possible for the collective life of the human race to become increasingly a matter of conscious human control?

If we have been living up to our obligations as teachers and scholars in the field of politics and government, we have been continually asking ourselves such questions, continually shifting emphasis, continually injecting new subject-matter and new illustrations into established courses, continually adjusting our methods, techniques, and materials to the new problems of society. To do anything else would be to assume that our forefathers had settled all important social, economic, and political problems and would provide an education suitable only for a static society.

Few of us can measure up fully to the ideal of teacher and scholar. All of us, however, can re-examine our work and reassess the value of the contribution we are making to the welfare of the community. In making such an evaluation, certain specific things may very well be kept in mind:

1. *There should be no rush to introduce new courses, but there should be a continuous attempt to keep all courses abreast of the times and to make full use of important new material.* For example (a) we need, at present, to explain the effect of the war upon our own governmental system, the

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reasons for the creation of new agencies, and the way in which they affect the daily lives of ordinary citizens. There are significant problems of personnel, procurement, the organization and relations of rapidly multiplying agencies, the relationship of government to the individual, the conduct of foreign policy, the use of executive power—to mention only a few—which are of immediate interest and can be used to illustrate the important underlying principles of our discipline. (b) We need to familiarize the student with probable post-war problems, analyze and evaluate the experience of the past in this respect and help prepare the student for intelligent participation in the future of his generation. (c) We need to give the student an understanding and appreciation of the difference between the autocratic or dictatorial and the democratic way of life. Here we can present the social, economic, psychological, and political factors which have given rise to the present world revolution as means of illustrating certain basic concepts about the nature of the state, the character of the good state, and the techniques for accomplishing politically desirable objectives. (d) We need to make greater use of comparative materials on Latin America, India, China, Japan, Africa, and the like. These areas, on which relatively little emphasis has heretofore been placed, are now significant to the student, and can be effectively used to help him understand many things that, standing alone, would seem abstract and remote from his life.

But all of this can, in most cases, be done in courses that already exist —American Government, Comparative Government, International Relations, Political Theory, and the like. Where it is felt that there is a real need for a course to fill in a gap in the curriculum, it should be given careful consideration and planning in order that it be worthy of academic consideration.

2. *A special attempt should be made to revitalize continually the courses all along the line—to give them real meaning and value to the student.* It is axiomatic that we cannot reach the great majority of the students unless we can first get and hold their attention, unless we can create interest in the material, unless we can arouse and stimulate their minds. This does not mean that the body of the material that we present should be watered down. It does mean that, if we are to leave an impression on the student's mind six months after he has finished a course, some way must be found to associate the principles of a discipline (for he cannot be expected to remember all of the facts) with the meaning of everyday life.

We should start, therefore, to a considerable extent at least, from the material of experience—the material of the common sense world in which the student lives, suffers, acts, enjoys. From the familiar things that the student experiences directly or indirectly we must select material and relate it to certain fundamental problems in order to bring the isolated fragments of experience together and give them meaning.

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Now, more than ever before, we are in a position to deal with such topics as presidential power, representative government, propaganda techniques, individual rights and liberties, and the conduct of foreign affairs in a concrete and realistic way by drawing from the wealth of examples constantly before us those that are of real significance to the student. Now, more than ever before, we need to develop an understanding and appreciation of democracy. But to do so we must have less of the cold legalistic framework of government and more of the actual way in which things work; less of the *minutiæ* of legislative procedure and more analysis and evaluation which will lead to critical judgment and insight; less of the legislature in colonial America and more of representative government in the twentieth century; less of state constitutions and more of public opinion. These examples, which can be multiplied many fold, remind us once more that we should reëxamine the content of all our courses. Some may need transfusions least they die of anemia.

3. *We should seek to provide those experiences which lead to a real understanding and appreciation of the democratic way of life, and should encourage students to participate in student government and in the life of the community in which they live.* The values of democracy can be learned in part by actual participation in the democratic process. Students should be given, therefore, as many opportunities as possible to experience an atmosphere of democratic coöperation. Students should share in the task of formulating the rules under which they live on the campus and in handing out discipline for the infraction of the rules. In the classroom they should have the experience of coöperatively seeking for the answers to the problems that we confront. Too often the classroom is darkened by an atmosphere of authoritarianism; problems are brought up to be solved and put to bed by the teacher. When this is objected to, it is often argued that the only alternative is to leave the student in a state of confusion. To a certain extent, this may be true; but the real alternative is not mental confusion. The real alternative is the development of a spirit of curiosity that will keep students in a state of inquiry. What we are seeking to create are actively searching minds—minds alert for knowledge and understanding, minds that can operate only in a democracy and are never consistent with the deadening hand of an authoritarianism that stifles free inquiry.

Moreover, students should be encouraged to participate in various group and community activities and in politics itself. Much has been done to introduce competent people into the fields of administration, but much remains to be done in the way of encouraging active participation of our better students in politics.

4. *We can profitably make considerable use of the comparative method in all of our teaching, and today we must not fail to take advantage of its effectiveness in making plain the values of democracy.* By comparing our Congress with the German Reichstag, our police system with the German

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Gestapo, our schools and universities with the German educational barracks, we may bring about a clearer understanding and appreciation of the democratic way of life. This is not to say that our institutions are perfect. Far from it! But by constant use of the comparative technique we can develop a critical judgment capable not only of comparing our democratic institutions with those of fascist Germany, but of comparing our institutions with those of a more ideal democracy.

5. *Finally, we should constantly keep in mind that our courses are not meant to create mere fountains of information, but must be designed to aid in the development of critical insight, keen judgment, and real understanding.* Mere factual knowledge—most of which is forgotten soon after graduation, if not soon after examination—is not enough. We must not require all learning and no thinking. We do not want "educated" men who have learned but not reflected, who have facts but no insight, who have knowledge but cannot find their way, who have been taught but not prepared for life.

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NEWS AND NOTES

PERSONAL AND MISCELLANEOUS

Compiled by the Managing Editor

At the University of Illinois, Professor Clarence A. Berdahl has been appointed chairman of the department of political science in succession to Professor John M. Mathews, who asked to be relieved of administrative duties.

At the University of Pennsylvania, Dr. Alfred G. Buehler has been promoted to a professorship and Dr. Edgar B. Cale to an assistant professorship. Dr. Cale has lately returned from a year's study in Latin America on a Penfield Fellowship.

Dr. Denys P. Myers, of the World Peace Foundation and the Fletcher School of Law and Diplomacy, has since June been with the Division of Special Research, Department of State.

Professors Ellery C. Stowell, of the American University, and Charles E. Martin, of the University of Washington, have exchanged places for the current academic year.

Professor Joseph R. Starr, of the University of Minnesota, has entered active service in the U. S. Army.

Professor John T. Salter, on leave from the University of Wisconsin, is teaching at Stanford University.

Professor Francis R. Aumann is on leave from Ohio State University and is in service with the U. S. Navy Department.

Dr. Harry A. Garfield, president of Williams College from 1908 to 1934, and president of the American Political Science Association in 1923, died at Williamstown, Mass., on December 11. A fuller notice will appear in the next issue of the REVIEW.

Professor Edward W. Carter, of the University of Pennsylvania, has received a lieutenant's commission in the U. S. Naval Reserve and reported for active duty on October 19. Dr. Bennett M. Rich, instructor, has been commissioned as a first lieutenant and is attached to the Provost Marshal's Office in Washington. Instructors John Dautrich and D. Barlow Burke have received commissions in the U. S. Naval Reserve.

New additions as lecturers at the University of California at Los Angeles include Drs. Thomas P. Jenkin, of the University of Michigan, and Paul Kelso, of Ohio State University.

Dr. Herbert G. Sonthoff, research assistant at Harvard University, has been appointed to an instructorship at Swarthmore College.

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Professor James C. Charlesworth, of the University of Pennsylvania, has been appointed director of the Graduate Division of the Wharton School.

Professor Fritz Morstein Marx, of Queens College, enlisted as a private in the Army on October 9 and is now stationed at Camp Joseph T. Robinson, Arkansas, where he is undergoing a course of basic training. Dr. Norton Long resigned as of September 1, 1942, to accept a position in the Division of Rent Control of the Office of Price Administration. His place has been taken by Dr. Hugh A. Bone, formerly of the University of Maryland.

Dr. A. B. Butts, president and professor of law at the University of Mississippi, on military leave, has been promoted from major to lieutenant colonel in the Judge Advocate General's Department, U. S. Army. He is on duty at Second Army Headquarters, Memphis, Tenn.

Professor Charles H. Titus, on leave from the University of California at Los Angeles since February, 1941, to serve as a major in the U. S. Army with the special assignment of public relations officer for the Fourth Army at the Presidio in San Francisco, has recently been promoted to a lieutenant colonelcy, and has been transferred to the Signal Corps at Fort Ord, California.

Dr. Royal S. Van de Woestyne has been appointed visiting associate professor of public finance in the Graduate School of the University of Cincinnati, and is concerned primarily with courses in training for public service. Dr. A. M. Hillhouse has been granted a leave of absence to act as budget officer, Office of the Administrator, National Housing Agency.

At the University of Missouri, Professor Chesney Hill has been granted a leave of absence to enter military service. He at present is located at Camp Barkley, Texas. Dr. Donald Harter, of the State University of Iowa, has been appointed assistant professor of political science and will teach the courses in international law and relations formerly taught by Professor Hill.

Professor H. Arthur Steiner, of the University of California at Los Angeles, took leave of absence from the University October 1 for the duration of the war to accept a commission as captain in the U. S. Marine Corps. He is temporarily stationed at San Diego, California. As chairman of the department of political science at the University, Professor Steiner has been succeeded by Professor Russell H. Fitzgibbon.

Dr. C. LeRoy Stephens has left Ohio State University to become instructor in political science at Harvard University. During the first half of the summer, he taught at the University of West Virginia.

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Dr. Frederic Heimberger has been made assistant professor at Ohio State University. He taught at the University of West Virginia during the second half of the summer session.

Dr. Thomas H. Reed, of New York City, participated in a panel discussion of the development of leadership to uphold American institutions, held in Indianapolis on September 29 under the auspices of the National Foundation for Education in American Citizenship.

At the University of Tennessee, Messrs. Lyndon Abbott, L. L. Durisch, Arthur Jones, and Norman Wengert, all of TVA, have been engaged as special lecturers in political science.

In a review of *Propaganda by Short Wave* (edited by H. L. Childs and J. B. Whitton), published in the October issue of this journal, the name of Professor John H. Herz, as a collaborator with Professor Whitton in preparing the introductory chapter, was inadvertently omitted.

The general theme for the twentieth session of the Institute of World Affairs held at Riverside Mission Inn, California, December 13–16, was "The World Crisis and Reconstruction."

Dr. George L. Millikan, formerly instructor at the University of Vermont, has been appointed assistant professor at the University of Delaware, where, at the beginning of this year, political science was set off as a separate department.

Dr. James K. Eyre, Jr., has become an instructor in the division of social sciences and an adviser in government at Sweetbriar College.

At the November elections, Dr. Howard J. McMurray, assistant professor of political science in the Extension Division of the University of Wisconsin, was elected to the national House of Representatives from the 5th Wisconsin district (in Milwaukee).

Professor Karl Loewenstein, of Amherst College, served last spring as a special assistant to the Attorney General of the United States and this year is dividing his time between teaching at Amherst and work in Washington.

Mr. Dale Pontius, of the National Resources Planning Board, is in service in the U. S. Army as a private.

At Iowa State College, Professor John A. Vieg has been made a member of a committee on the newly created Social Science Center—a committee having responsibility for formulating policies governing research, teaching, and extension work in all the social sciences.

Miss Daisy Parker, who holds a master's degree from the University of Virginia, has been appointed instructor at the Florida State College for Women.

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Dr. John H. Hallowell, who last May resigned his instructorship at the University of California at Los Angeles to accept an appointment with the Office of Facts and Figures, is now at Duke University as visiting assistant professor and is giving courses normally conducted by Professor Taylor Cole, now with the Office of War Information in Washington.

After February 1, Professor Leland M. Goodrich will be on leave from Brown University to serve as full-time acting director of the World Peace Foundation in Boston.

Professor William Tayler, formerly in charge of courses in international relations at Syracuse University, is now senior economic analyst in the Bureau of Foreign and Domestic Commerce, Department of Commerce, and Professor John Russell, formerly on the staff of the Office of Civilian Defense, is now working under the budget director of the War Department.

Professor Spencer D. Albright, who recently completed a two-year tenure at Reed College while Professor McKinley was in Washington, has joined the staff of the University of Washington as lecturer in political science. He will teach most of the courses regularly handled by Professor Edmund F. Spellacy while the latter is in service as a naval officer.

At the University of Alabama, Professors Charles W. Smith, Jr., and Eric Voegelin have resigned to accept other positions, the former at the University of Kentucky, the latter at the Louisiana State University. Professor Baskin Wright has taken leave of absence to accept an appointment with the state office of the Office of Price Administration, and Dr. Walter H. Bennett, a member of the political science staff of the University for three years, has returned to the political science department as instructor.

At the Illinois Institute of Technology, the following changes have taken place during the current year: Dr. Herbert A. Simon has been appointed assistant professor to succeed Dr. Victor Jones; Dr. Harold W. Davey has resigned to accept a position with the National War Labor Board in Washington; and Mr. M. W. Fodor, special lecturer in international relations, has become a full-time member of the staff of the *Chicago Sun*. Professor John Day Larkin is serving in the Chicago area as Special Mediation Representative for the War Labor Board.

An institute on World Organization, held at the American University September 14–18, was attended by some one hundred sixty persons. The lectures are to be published in book form.

As a contribution to an understanding of the war effort, the University of Washington political science department is offering a seminar on War-

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Time Administration. Unusual features include the presence of official personnel from the agencies under discussion and the use of the facilities of the Bureau of Governmental Research to enable the staff to keep abreast of latest developments.

In coöperation with the National Archives, the School of Social Sciences and Public Affairs of the American University is offering an integrated program in records and archives administration, intended to serve the needs of those responsible for records both in the file rooms of government agencies and in archival establishments. The program consists of a basic course for undergraduates in the management of records, both current and non-current, and a number of advanced courses on more specialized phases of the subject.

The sixty-second annual meeting of the Academy of Political Science, held at the Hotel Astor, New York City, November 10, was devoted to three general topics, as follows: "The War of Distances," "The Armed Forces—Their Movement and Supply," and "The United Nations."

Internship Training in Government Administration at Washington. A seventh group of government interns is now in Washington engaged in administrative training under the auspices of the National Institute of Public Affairs. Following an orientation of approximately a month, the twenty-four men and eighteen women were placed in more than a score of government agencies, where they are performing practical assignments under the supervision of federal officials. They are meeting once a week for discussions with men prominent in public affairs, are taking courses after hours at the American and George Washington Universities, and are being given tutorial supervision by the staff of the Institute. Unlike the former students, the present group started on July 1 (instead of in September), and their schedule has been changed so as to take only seven months rather than the customary nine. Basically, the internship program remains much the same; and the 1943 competition was announced in November.

What has happened to the past six groups of interns? A survey of the 229 graduates of the National Institute's program has just been completed. Almost all interns have gone into government service, and with the nation converting to war there has been a corresponding "conversion" in their activities. Half of the men already are in the armed services, and of the remaining interns, half are in civilian war agencies.

There are 106 former interns in the various civilian services of the federal government. Eight of this group are in foreign service outside the United States, six with the State Department in Latin American countries working as vice consuls or economic analysts, and two with the Panama

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Canal in personnel management. One graduate is in Africa with Pan American Airways. In Washington, a large group is employed in various agencies directly engaged in war work. For example, seven are in the War Department, seven in the War Production Board, six in the Office of War Information, five in the Board of Economic Warfare. Others are in agencies closely related to the war program, such as the Executive Office of the President, the Treasury, and the Department of Justice.

Most of the graduate interns now have responsibilities far larger than those usually given to their age group. For example, one is assistant director of personnel management in the War Department, which has jurisdiction over a million civilian employees. Another is budget officer of Foreign Funds Control; another is a section chief in the Office of Price Administration. Others are assistant executive officers, administrative assistants, economic analysts, placement officers, and the like, with salaries varying from the junior grade ($2,000) to the principal level ($5,600).

Of the forty graduate interns who are not in the federal government, ten are in education, either as faculty members or as graduate students. Eighteen are housewives, a number of them carrying on part-time community work. Five are employed by private business concerns. Three are in local government and quasi-governmental organizations.

Eighty-one men at the present time are in military service, thirty-three in the Army, thirty-six in the Navy, seven in the Coast Guard, five in the Marines. Twelve of the men in the Army are commissioned and several others are officer candidates. All of the men in the Navy, Coast Guard, and the Marines are commissioned officers or in training. Rank alone, of course, does not tell the whole story. One Army officer is in Australia as personnel director of a large force of civilian workers supporting the A.E.F.; another has an important post in the national headquarters of the Selective Service System. In the Navy, many of the ensigns are in supply work, while in the Coast Guard a number are doing work on organization problems. In all branches of the armed forces, interns are using their administrative training.

The rapid rate at which the interns have advanced to positions of responsibility is testimony not only to their ability and training, but also to the great need for administrative personnel. In peace-times, there has not been a widespread recognition of the importance of selecting and training management-talent; but the war has made the necessity very apparent, both for military and civilian purposes. These needs constitute a challenge to college students to prepare themselves for careers in administration and management.—Frederick M. Davenport.

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If Men Were Angels. By Jerome Frank. (New York: Harper and Brothers. 1942. Pp. xii, 380. $3.75.)

Men are not angels. Government must, therefore, be instituted among them. That point is not new; it was established long before the Federalist papers were written. Even in Aristotle's day, there was not a little "government interference." And today, in this period of priorities and price controls, there cannot be much question about it: Men are not angels and must be governed.

It does not necessarily follow, however, that government should be "of laws and not of men." In fact, there is no such thing. Government is not a mechanism operating automatically. Belief in that myth has had unfortunate consequences; people are thus induced to be careless about the quality of men who govern them. Government cannot be dissociated from the men who run it. And yet, the alternative is not government of men. Government *should be* "of laws"; but it should be "of laws well administered by the right kind of men." This should be the emphasis in a democracy, and a popular awareness of it is essential if democratic government is to operate effectively.

Readers of Judge Frank's earlier work, *Law and the Modern Mind*, will recall his penetrating analysis of the courts. We were urged there to peer behind the words "independent judiciary" and look at the judges. Now, in the same convincing manner, he tells us we must look behind the administrative agencies at the men who administer them. The men determine the quality of the work. Drawing upon records of the Securities and Exchange Commission rather heavily for illustration, Mr. Frank finds that these agencies are not star chambers exercising arbitrary authority in an unrestrained manner. On the contrary, they hold open hearings, assemble and analyze facts with expertness, and willingly permit their decisions to be subjected to judicial review. Their powers are carefully curtailed by law.

This book was written in 1940 and 1941, Mr. Frank tells us. Thus it was written while he was still a member of the Securities and Exchange Commission. Moreover, it is dedicated to Associate Justice William O. Douglas, who, according to Mr. Frank, "while chairman of the Securities and Exchange Commission, superlatively demonstrated that effective administration can be made an important instrument of true democracy." This sets the tone of the book. It is a defense of methods and procedures of the SEC and other administrative agencies against such erudite critics as Dean Pound. The administrative agency, in Mr. Frank's opinion, "offers an affirmative and purposeful way of insuring that, to a consider-

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able extent, the relevant facts will be brought out, the public's interest made clear and justice done" (p. 147).

Judge Frank is not a Marxist. He would not abolish private capitalism. He would not push the "economically powerful few" too hard, lest they turn to fascism to try to save their economic skins. "The result, in all likelihood, would be civil war" (p. 260). Regulation by administrative agencies is the way out, if the economic royalists will only accept it. The welfare of the many can be achieved without a destruction of the major powers of the minority.

The author is not unaware that there is a war going on. Every American should be bending his energies to achieving a victory over Nazism, without forgetting, however, "that that victory will indeed be pyrrhic if an effective democracy at home does not follow" (p. 260).

Some day this war assuredly will come to an end. Post-war problems will be upon us, problems as difficult of solution as are the war problems today. There will be a mad scramble for power. Old institutions and methods will be subjected to reëvaluations and new ones appear. This book should be read by everyone interested in making democracy work more effectively.

E. Allen Helms.

Ohio State University.

The New Belief in the Common Man. By Carl J. Friedrich. (Boston: Little, Brown and Company. 1942. Pp. xiii, 345. $3.00.)

Democracy necessitates faith in the common man. This is impossible if it is meant to imply complete rationality, impeccable taste, the best judgment of specialized accomplishment, and general infallibility on the part of common men, individually or collectively. It is possible if we confine the scope of common men to the practical affairs of common concern and common human values which are politics. For common men, making collective judgments, embody a traditional morality which ensures sanity, and possess character, more significant than intellect in that sphere. Propaganda, given freedom for all interests in its making, is not dangerous: the interdependent thought characteristic of common men collectively will arrive at a balanced position between conflicting claims, particularly where education promotes independent thought in individuals and discipline in training leads to the self-discipline of character.

Modern administration, with its bureaucracy, is not opposed to democracy, but rests on a give-and-take between specialists in that field and the ordinary man, who, by reason of his own instinct of workmanship, can appreciate and judge the skills of administrators. Similarly, planning is a continuous inter-penetrative adventure, not the fitting of people to a blue-print. Democracy is not opposed to efficiency, but constitutes its true foundation.

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Democracy *is* opposed to the concepts of the state and of sovereignty, totalitarian in their nature. It is opposed likewise to the rigid majoritarian thesis, anti-democratic in concept, and absolutist in consequences. Likewise, though more subtly, absolutist, and clearly an aid to élite doctrine and practice, is the dogma that democracy must rest on agreement on fundamentals: that is a denial of the very freedom, necessitated by human uncertainty, which is the rationale of democracy.

Finally, democracy rests on pan-humanism, the essence of the Christian tradition with its cherishing of personality. Pan-humanism's specific contents today are the Four Freedoms. They must be institutionalized. That is possible only if the common man, looking beyond the nation, provides the necessary psychological foundations of sympathy and imagination and the ethical conviction of his tradition.

These, in essence, are Professor Friedrich's theses. His insistence on limiting the claims made on behalf of the common man, lest by claiming too much we render the democratic thesis too facilely vulnerable, seems genuine wisdom in these difficult days. His criticism of majoritarian dogma as a sure road to tyranny and his emphasis on the necessity of not insisting on any specific fundamentals, since the very justification of democracy is a recognition of human imperfection, are good ethics no less than sound practical advice to professed defenders of democratic society. Finally, his suspicion of all excessive veneration for the state, direct or indirect, overt or covert, and his emphasis on the need for revivifying the essence of Christian conviction and Christian tradition concerning the nature of personality, and the duties of men in terms thereof, are a healthy preachment against a host of contemporary errors, even though one is constrained to protest against his thoroughgoing condemnation of the concepts "state" and "sovereignty," which need redefinition and correct use, not rejection.

Nevertheless, Friedrich does not escape entirely the common error of confusing the ethical justification of democracy on the ground that it, unlike élite régimes, gives scope for the development of personality in all men by reason of its proper humility, its unwillingness to believe in the human possession of final truth, and the much more questionable claim that, even in a limited sphere, it embodies superior wisdom and secures greater efficiency. Even in politics as practical judgment and good sense, it is not readily demonstrable that the collective democratic judgment will necessarily be a better one than that of the expert, though on moral grounds it may be better to follow it, even if it is, in content, less wise as a solution for particular problems. Where there is already a democratic society, firmly based, there democracy will no doubt work most efficiently —indeed, it may be that it alone will function effectively. But to show that it is always and necessarily the most efficient government is well-nigh impossible. This is not, again, to argue that democracy does not have the

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duty to develop efficiency in order that it may maintain itself, far less that it cannot do so. Similarly, it must no doubt satisfy various wants lest men, dissatisfied, reject it, too, in search of immediate fulfilments, learning, too late, that they have surrendered their birthright for a mess of pottage. Many today have learned that bitter lesson, and realize the value of moral freedom against any organization, however efficient. Democracy must be efficient that its moral principles may continue to enjoy institutional embodiment: superior efficiency is not its given attribute, or its moral justification. Indeed, in time of crisis it may be possible for a society which cherishes democratic values to forego temporarily, without disaster, some of the essentials of normal democratic government for the sake of survival. That is always hazardous. But men collectively must ensure survival before they can pursue the good life, even though bare life is of no moment unless we believe they have capacity for the former, and may well be to them something worth surrendering if they find themselves deprived of the opportunity to exercise that capacity. It is the duty of democracy always to ensure that degree of efficiency necessary under the given conditions for its safety. Democracy does not automatically so do because it is such; and its moral rightness does not rest on its so doing. Indeed, Professor Friedrich's continual insistence on collaboration and consent, in administration and planning, is in truth itself not a demonstration of the superior efficiency of those techniques, but precisely a plea that they are superior because consonant with, and expressions of, the moral freedom of the common man.

THOMAS I. COOK.

University of Washington.

The Amending of the Federal Constitution. By LESTER B. ORFIELD. (Chicago: Callaghan and Company. 1942. Pp. xxvii, 242.)

There have been curiously few systematic treatises on Article V of the Constitution, although potentially it is the most important provision in the entire document. Books and monographs have appeared on several of the leading clauses and on the legislative, executive, and judicial powers in general. But the amending power has received relatively cursory treatment. There have been many articles in legal and political science journals touching upon one or another phase of the power and its use. Yet this is the only volume known to the writer which devotes itself wholly to a consideration of this provision. And it is itself a mildly revised and expanded collection of law review articles.

The reason for this literary nonchalance with regard to Article V is that it has never proved as significant in our constitutional development as might have been expected. The first ten amendments were, to all intents and purposes, part of the original Constitution. And in the next 150 years

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not more than two or three amendments were adopted which can really be considered as changing in any vital or significant way the distribution of powers under the Constitution. The formal amending power has therefore been of almost miniscule importance in the actual development of American governmental institutions.

The reasons for this, in turn, are not far to seek and have been commented upon many times. It is fair to say that the Supreme Court of the United States has sat as a continuous constitutional convention, making by interpretation and construction many fundamental changes in the Constitution. What has not been accomplished by judicial interpretation by way of adapting that document to the needs of a growing nation has been achieved by constitutional usage. The operation of Article V has been relatively cumbersome, inflexible, and infrequent.

One could approach the problem of amending the federal Constitution from a number of points of view. The legal approach would be concerned chiefly with the intent of the framers, the rôle of the courts in effectuating that intent, and an analysis of the courts' rulings with regard to the scope of the power and the appropriate procedures under it. The political approach would have to do with the responsiveness of the mechanism to political necessities, the rôle of custom and usage, the activities of courts as amenders of the Constitution, and the relationship of power-groups within the community to the nature and effectiveness of efforts to change the contours of governmental authority. An economic approach might be concerned with determining the economic implications inherent in a difficult amending process, and in the alignment of economic groups on issues of amendment. A philosophical approach would lead to considering the methods of changing written fundamental law as they affect such concepts as sovereignty, democracy, and natural law. A broad and comprehensive discussion of the amending power in the United States would need to encompass some consideration of these various aspects of the problem.

Professor Orfield's book does not pretend to be such a broad and comprehensive discussion. The volume is restricted largely to the legal approach. After considering the origin of Article V, and commenting that it was apparently the view of the framers that it would be used considerably more than has in fact been the case, Professor Orfield follows with three chapters which constitute the heart of the work. They deal with judicial review of the validity of amendments, with the procedure for amendment, and with the scope of the amending power. While restricting himself largely to what courts have said, he does put himself fairly clearly on record as against the proposition that there are implied limitations on that power. After a chapter on the theory of sovereignty—in which he finds that "the nature of the federal amending process demonstrates the

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futility of the concept of sovereignty" (p. 165)—he closes with a consideration of proposals for the reform of the amending clause. Here again he contents himself largely with stating the arguments and their implications. His own preference for a reasonably flexible method of altering the fundamental law is expressed when he concludes: "It may be well to guard the people against themselves as to ordinary matters, but it is possible to go too far when it is sought to do this with respect to altering the Constitution. Society cannot go on without taking some chances. The interests of progress as well as order must be consulted, otherwise order itself will perish" (p. 221).

The strength of the work lies in its thorough, scholarly, and exhaustive investigation of court opinions dealing with Article V, and in its systematic approach to all important legal aspects of the amending power. Its almost exclusively legal approach, and its devotion of many pages to what will seem to many as legal *minutiæ*, will restrict the breadth of its appeal and the scope and depth of its impact. It is, in the last analysis, a competent treatise on the legal aspects of the amending power, on the basis of which a first-rate study of constitutional change in America in its broader phases can be projected. This latter work remains to be written.

VINCENT M. BARNETT, JR.

Washington, D. C.

Administrative Regulation; A Study in Representation of Interests. By AVERY LEISERSON. (Chicago: The University of Chicago Press. 1942. Pp. xii, 285. $3.00.)

Mr. Leiserson discusses in this book a difficult and important question, and by his extended collection of relevant data, and thoughtful analysis of what he has read and heard, has helped to create some needed order. His title might well have been "Economic Interest Representation in Administrative Regulation"; he treats of legislative provisions and regulatory administrative organizations "in which persons are designated to act in the name of specified economic groups or the group or groups themselves select their delegate or agent to act for them in positions of responsibility for planning and determining policy."

In the first two chapters, Mr. Leiserson argues for the importance of group interests as basic elements in the policy of administrative agencies possessed of discretionary power. In these chapters, and in the concluding one, he advances most of his generalizations, theories, and definitions; and because of the reviewer's opinion of the value and interest of the book, he would like much to explore with the author some of these. The matters dealt with here are very slippery and have been subject to the loosest treatment by us all; and the author might usefully, by tightening his

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sentences at points, have made it easier for the reader to come to grips with the really good things he has in store. Thus, should the phrase "represented in administration," on page 6, be changed to "represented before the administrative agency in its proceedings," as the further discussion seems to show? And the phrase "the process of integrating conflicts of economic groups with the exercise of public authority" is so important to his thought that it deserves more clarification. A long sentence on page 54 contains two phrases—"whether it is not more relevant" and "in terms of"—that do not assist the reader to grasp the author's point. The reviewer would emphasize that these suggestions for the greatest possible effort to clarify, perhaps by shorter sentences and a watchful scrutiny of phrases, are made here because the author is making a valuable contribution to the effort both to describe an important part of our government and to create a more valuable political theory.

The bulk of the book—Chapters 3–7 inclusive—describes different types of administrative participation in the administrative regulatory process, as illustrated by many agencies, procedures, and episodes. Mr. Leiserson has made excellent use of the field fellowship of the Social Science Research Council to which he refers. He seems to have been sensitive to the remark or action which reveals the heart of a practice or experience; thus his comment (pp. 210, 211) concerning the production-control and land-use programs of the Department of Agriculture are penetrating, and his account of the bituminous coal "stabilization" experience goes well below the surface and behind the façade.

After an account of the rôle of interest participation in the exercise of the summary, dispensing, licensing, order-making functions, investigatory, rule-making, and mediating functions, Mr. Leiserson surveys experience with representation of interests on boards, and discusses group attitudes toward the assumption of official administrative responsibility by groups. There follow chapters on representative advisory committees, the allocation of administrative functions to interest groups (with some account of the resulting problems of defining the group, and safeguarding its exercise of public powers), and on the legal aspects of interest representation. The final chapter—"The Dilemmas of Interest Representation"—is an even-tempered, balanced, and wise appraisal of the "endowment of the responsibilities of public office upon group officials or representatives." The theoretical problem is confronted, and Calhoun relevantly cited. There is a reference to the pluralist and guild socialist theorizing of the time of the last World War, and the failure then to solve the problem of social unity raised by such theories—and dealt with so abruptly since by powerful party machines. In the discussion of the administrative aspects of this dilemma, more perhaps might be made of the problem of determining what the group is, how it shall function, and

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whether its minorities shall have "rights." The author fairly appraises the difficulties and advantages of interest participation on administrative boards and advisory committees, and through delegation of functions to "private" organizations. This discussion may well be read with Dewey's *The Public and Its Problems* in mind. The author does not avoid frank statement of his preferences, while sensitive to qualifications dictated by wide observation; and he leads from specific data to wide-ranging and well considered generalization concerning the fundamentals of politics when the nature of his inquiry requires it. The book ends with useful suggestions for action that reflect hard thinking, an even temper, and a sense of civic responsibility.

JOHN M. GAUS.

University of Wisconsin.

Administrative Planning Agencies in the Federal Government. (Washington, D. C.: Government Printing Office. 1942. Pp. 195.)

The scope of this publication by the Civilian Personnel Division of the Office of the Secretary of War is keyed to a definition of administrative planning by Mr. Donald C. Stone, assistant director of the Budget. He says that administrative planning "is concerned with the development of sound organization, the method of staffing the organization, the procedures and practices to be followed, and the direction and coördination of operation" (p. 7). Except for inevitable matters of interpretation, this definition is used as a foundation for examination of fifteen departments, bureaus, commissions, offices, agencies, and administrations in so far as they have units concerned with the functions specified. The primary purpose of the survey is to advise the War Department how best to profit by the experience of other governmental administrations in meeting the problems of expansion and multiplication of activities.

The method used in the survey is indicated clearly. A questionnaire was prepared as the basis for interview and examination of units coming within its coverage. This questionnaire is conveniently presented at the beginning of the volume. Then follows a forty-page analysis of findings, covering matters of organization within the units examined, the relation between units and heads of administrative departments or other large systems, and the functions of the units themselves. Each of the units examined is clearly presented in an appendix, so that the bulk of the survey consists of appendices giving the details of organization and functioning of particular units within the purview of the survey. The wealth of description permits any responsible official faced with the problem of maximum use of his resources to obtain suggestive help. The authors of the survey, however, have refrained from trying to establish universal values—a quality that lends value to the publication because of its exploratory rather than definitive nature.

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While care is evidenced in obtaining comparable, and relatively complete, descriptive data within a fixed definition of scope, no attempt has been made to determine relationships between various planning agencies within or among different departments or larger agencies. Just what the place of personnel, budget, enforcement, and rule-making planning agencies is or should be in the scheme of things is not critically approached. That an over-all problem of planning seems inherent in our developing administrative processes seems indicated, but not discussed. The problem of administrative planning, in a larger sense, by which the purposes of legislation are effectively carried into continuous operation, within the frame of discretionary authority, and with a minimum of internal friction and an optimum of consideration of citizen interests, is beyond the perspective of the survey. In this sense, the report might be said to be concerned with means of executing ends, independently of the ends themselves. Although justified for the purposes of the survey, its exploratory findings seem to point the need for further examinations with a broader scope and vision before an adequate perspective of the planning function of administration can be appreciated.

SPENCER D. PARRATT.

Syracuse University.

The Judicial Function in Federal Administrative Agencies. By JOSEPH P. CHAMBERLAIN, NOEL T. DOWLING, AND PAUL R. HAYS. (New York: The Commonwealth Fund. 1942. Pp. xii, 258. $3.00.)

The Legal Research Committee of the Commonwealth Fund adopted the policy some years ago of rendering aid to scholars in the preparation and publication of materials relating to administrative law, which would be of service to the legal profession as well as to those who are responsible for the formation of the policies of administrative agencies or whose duty it is to define their powers and to provide means for the control of their action. The above volume, issued as one of this series, deals with the practices and procedures of a selected group of federal administrative agencies, and analyzes and evaluates the judicial function of these tribunals. Throughout the study, the aim has been to describe the judicial activities of administrative officers within the contours of their statutory powers and of the court decisions and developing techniques relating to the performance of their functions. More than a third of the volume is devoted to a presentation of factual data concerning administrative judicial sanctions, such as imprisonment, fines and penalties, the withdrawal of benefits, or threats of prosecution. The most valuable and informative part of the volume is contained in this chapter, since too little consideration has been given to the informal methods and procedures of administrative agencies, as well as to the means of carrying out their policies without recourse to formal proceedings with hearings, the preparation of records, and

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the making of findings as the basis of an order or award. Thus attention is directed to a neglected phase of administrative law involving first non-judicial sanctions mostly in the form of exhortation or propaganda, and then the administrative judicial sanctions by which the larger part of the objectives of certain agencies are accomplished without formal proceedings by the agencies or appeal to the courts.

Though the informal methods of the agencies, by which the larger part of their work is done, are described briefly, primary consideration is given to their formal proceedings. Such proceedings are regarded chiefly from the standpoint of the preparation of a record for adequate and effective review by the courts rather than the means of securing fair, equal, and substantial justice to the parties whose interests are involved. In the preparation of the record, the agency, contrary to what would seem to be rational requirements and principles, is expected to divest itself of all the information and experience gained in dealing with similar situations in order to have the hearing proceed as though it were on all sides one of first impressions. Otherwise the bias of the agency to accomplish certain ends, or the "intuition gained from experience," as Justice Holmes called it, might influence the findings and the order. And it is assumed that the practice of writing opinions after the common law custom, which is of course not followed in many court proceedings, is a necessary requirement for the formal proceedings of administrative tribunals. The increasing complexity of the law due to the welter of opinions rendered by the courts does not augur well for the results of a similar practice by all of the administrative agencies. And fortunately the courts are moving in the direction of placing limitations on the number and extent of written opinions. Unless the object is to build up a nicely articulated and symmetrical system of jurisprudence which may be used to develop precedents for mechanically-minded administrators or judges, there appears to be little advantage to be gained and much time, energy, expense, and useless paraphernalia to be saved or avoided if certain tribunals in their formal proceedings are not required to write opinions sustaining the findings and order in each case.

As an indication of the disposition of the authors to encourage the development of administrative agencies in accordance with court models, the Morgan cases are treated as defining the requirements for proper procedure of these tribunals, without any consideration of the impractical conditions and unreasonable requirements laid down in these cases and their modification in recent decisions. In a similar manner, the decision of Chief Justice Hughes in the case of Crowell v. Benson, relating to the requirement of a trial *de novo* when so-called "constitutional" or "jurisdictional" facts are involved in the findings and order of an administrative board, is considered as laying down the law of the land as required by the

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federal Constitution. A review of the cases and the practices of administrative tribunals in workmen's compensation cases shows, however, that this decision has had practically a negligible effect upon the procedure in this type of case. A trial *de novo* is not resorted to, although obviously in a considerable number of such cases jurisdictional or constitutional facts are involved.

From the reading of these pages one would gather the impression that all is serene and peaceful on the administrative law front and that the important issues arising from the review of administrative agencies have been reasonably and adequately settled. Nowhere does one get more than a glimpse at the sharp, and sometimes acrimonious, division of opinion among the Supreme Court Justices on the review of the decisions of administrative tribunals. Nor do the pendulum swings of the courts favorable or unfavorable to administrative methods and procedure receive due consideration, as well as the marked changes in the attitude of the Supreme Court on some of these controversial questions as manifested in recent decisions. In short, in the opinion of the reviewer, an opportunity was missed to give light and guidance, not only to lawyers, but also to the public, whose rights and interests are vitally affected by the work of administrative tribunals on some of the extensively discussed and the strongly contested issues which have recently been agitated in the press, on the public forum, and in legislative halls.

CHARLES GROVE HAINES.

University of California at Los Angeles.

Employee Relations in the Public Service; A Report Submitted to the Civil Service Assembly by the Committee on Employee Relations in the Public Service. GORDON R. CLAPP, CHAIRMAN. (Chicago: Civil Service Assembly of the United States and Canada. 1942. Pp. xx, 246.)

No field today presents greater challenge to the administrator, whether public or private, than that of employee relations. Nor is any area more fertile for the designs of the political theorist. Here lie the real frontiers of democracy—frontiers still largely unexplored, but of untold promise. For political democracy can be strengthened in these times of strain only as democratic ways become a part of all aspects of men's lives; and it is difficult to imagine a more effective counterpoise to totalitarianism than the democratic organization and administration of industry and the public services.

In the present condition of the world, the relations of employees to management assume a significance extending far beyond questions of enhanced productivity. Here, as in England, we are witnessing the first vague fumblings toward the democratization of our economic life; and those efforts cannot be without effect upon the public services. They are

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reflected, indeed, in the steady progress of civil service unionism and in the increasingly insistent demands of the staff for a voice in matters affecting them. The problems with which the present volume deals are thus of the widest significance.

This report differs from the three earlier reports in the Civil Service Assembly series in that it does not presume to outline a model program. Rather, the Committee set out to provide students and practitioners with a "source book of illuminating opinions, judgments, and experience which may be suggestive for future study and resolution of the problems in the field." In this aim, they have succeeded admirably. In no other work have the problems of employee relations in the American public service been so broadly conceived or so lucidly clarified. The volume is an indispensable compendium of organized opinion. Its authors have combed the literature for relevant materials and forged them into a lively and highly literate account of the pros and cons of unionization, affiliation with outside labor groups, collective bargaining, majority representation, the right to strike, the rôle of the personnel agency in employee relations, the bearing of employee organization on democratic theory.

A certain inconclusiveness is the inescapable result, not only of the controversial subject-matter of the report, but of this method of presentation. Pros and cons are so carefully balanced that the reader occasionally feels like a tight-rope walker. But only occasionally. On most major points, clear-cut conclusions are reached which provide a firm foundation for progressive policy: the free association of employees and their access, through representatives of their own choosing, to administrative officers are desirable in the democratic state; a majority of the employees in any appropriate unit of representation should have the right to speak for all employees in that unit; the affiliation of civil service unions with outside labor groups is appropriate in a democracy; public employees should not have the legal right to strike; employee relations are more a matter of emphasis in personnel administration than of a series of related personnel practices; the proper rôle of the central personnel agency in respect to employee relations is one of stimulation and advice to the operating departments. In their careful analysis of the field, the authors reach many other conclusions of equal interest to the administrator and the theorist. The judicious manner in which the evidence pro and con has been weighed lends authority to these conclusions. The report is an important contribution to the literature of administration in a democracy.

Antioch College. J. DONALD KINGSLEY.

The Impact of the War on America. By ROBERT E. CUSHMAN AND OTHERS. (Ithaca: Cornell University Press. 1942. Pp. viii. 159, $2.00.)

These six lectures were delivered before undergraduates by members

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of the Cornell faculty in February and March, 1942. They are based upon the assumption that the United States has long-term interests which should be understood. "The Impact of War on the Constitution" is the subject of Professor Robert E. Cushman's lecture. The greater part of it is devoted, properly enough, to civil liberties. He believes that these liberties will be maintained within the relatively limited spheres in which the Attorney General's office and the courts can act; but he fears repressive legislation and the misdirected activities of super-patriots. Professor Royal E. Montgomery lectures on "The Impact of War on American Labor." He discusses wages, hours, mobilization, and other war labor problems, and warns us that 1942 is not 1917 on the labor front.

In his lecture, "The United States and the British Empire," Professor C. W. de Kiewiet stresses the common background and interests of the inhabitants of the United States and the British Commonwealth of Nations, but his greatest emphasis is upon the point that our interests demand that the Atlantic Ocean remain in friendly hands. Professor Knight Biggerstaff gives "A Reappraisal of the Far Eastern Policy of the United States." The recent failure of that policy he attributes to our dependence on treaties which we were unwilling to implement with force. As for the future, our policy must be based on a strong China and racial equality throughout the Far East. In his "The United States and the Balance of Power," Professor Philip E. Mosely maintains that this country has always had an interest in that balance, but that its failure to recognize its interest caused it to turn its back, or at least its side, to Europe in 1919. We realize today, he says, that we have become a part of the world balance of power. Professor Herbert W. Briggs, lecturing on "The United States and Post-War International Organizations," gives us these words of caution: "It is comparatively easy to draft a blueprint of international order based either on facts as they once existed or on facts as we would like them to exist; but until we can estimate the degree of post-war exhaustion; the consequences of political, economic, and social dislocation; the extent to which whole peoples may be prepared to forego some of the advantages of sovereignty and nationalism in order to gain compensating, but perhaps less obvious, advantages—until the time when these and other factors are more calculable, it will be futile to devise blueprints for the new world" (p. 123). Consequently, he sticks to basic problems and principles; and so do his colleagues.

The lectures are uniform in length, almost models of clarity, and maintain a high standard of objectivity. They are realistic and not without some sparks of life. Intended primarily for undergraduates, they may be read with ease and profit by the general public.

CLAUDIUS O. JOHNSON.

State College of Washington.

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Military Law and Defense Legislation. By A. Arthur Schiller. (St. Paul: West Publishing Co. 1942. Pp. xxxiv, 647. $5.00.)

The literature on military law in this country is not extensive and the standard works on the subject are not of recent vintage. The revised edition of Winthrop's *Military Law and Precedents* was published in 1895, and the most recent revision of Davis's *Treatise on the Military Law of the United States* appeared in 1915. Professor Schiller's volume, however, despite the title, is not a treatise but a book of cases and other selected materials, including extracts from the laws and regulations governing the armed forces and the selective service system, and opinions of the Judge Advocate General. It is designed for use as a text in law school courses.

The body of the work comprises four chapters dealing respectively with "The Constitutional Extent of Military Power," "The Army of the United States," "Military Law Proper," and "The Soldier's Civil Rights." The Articles of War, the Selective Training and Service Act of 1940, and the Soldiers' and Sailors' Civil Relief Act of 1940 are printed in an appendix. It may come as somewhat of a surprise to the reader to discover that only 170 pages are devoted to "military law proper," while half again as much space deals with the army of the United States. Under the latter heading are considered such matters as the organization and composition of the army, enlistment of persons not qualified or ineligible, and the construction and application of the conscription acts. This emphasis is perhaps understandable in a casebook, because naturally enough there are many more judicial decisions dealing with this type of question than with matters falling completely within the domain of military jurisdiction.

The area within which the military authorities make—or at least apply—their own law is a large one, as is to be expected. This is both because the civil courts are properly reluctant to intrude upon the sphere of the military and because certain general clauses in the military law itself (such as the ninety-sixth Article of War) inevitably give a great deal of discretion to the military authorities. There is a point, however, at which the civil courts will intervene. The decisions of draft boards, for example, are ordinarily not subject to judicial review, but a plain abuse of discretion, such as refusal to consider relevant evidence, will be corrected by the courts. Courts-martial must be set up and must proceed in accordance with law. The jurisdiction of military authorities is open to question in the courts, where courts are available, although the findings of the military as to the jurisdictional facts are final.

Although the volume contains a large amount of material other than judicial opinions, the question may legitimately be raised whether the subject is not one which calls for an even greater departure from the typical casebook pattern. Many cases which reach obvious conclusions and

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others which are of only historical interest, having been overruled, might well have been omitted and their substance set forth in far less space. Nevertheless, this timely volume will undoubtedly enjoy a wide adoption and help fill a real need in law school instruction.

Swarthmore College. J. ROLAND PENNOCK.

State Housing Agencies. By DOROTHY SCHAFFTER. (New York: Columbia University Press. 1942. Pp. viii, 808. $7.50.)

When the only concern of the public for housing was police power regulation of private enterprise, the rôle of the state as the repository of that sovereign power was clear. In the 1920's, as we fumbled toward a recognition of broader public responsibility, one or two heavily urbanized states served as those laboratories so dear to Louis Brandeis. The public provision of housing was suddenly catapulted forward by the depression as an element in a federal public works program. Almost as soon as it was recognized as a valid public concern, it was clear that it involved expenditures far beyond the capacity or readiness of the states to finance. Housing is thus one of those functions which became affected with a national interest so soon after it was recognized as a public interest that the states were bypassed as major agencies for implementation. By and large, they have been chiefly begged and cajoled into empowering their creatures, the cities, to deal with the federal government.

Some years ago, Professor Schaffter marked out for herself the field of state housing agencies. She has read all the legislative documents, she has frequented housing meetings, she has corresponded and interviewed diligently. She has now produced a volume of over eight hundred pages to demonstrate that this historic development is all wrong, that federal housing agencies have deliberately suppressed the states. "Each state within the United States is a powerful, competent, and wealthy unit, and no possible reason except one can be offered to justify its exclusion from the housing program" (p. 7). "Immediate steps should be taken to insure full state participation in the public housing program" (p. 8).

To support this position, Miss Schaffter rehearses the history of ten state housing agencies in detail—only three of which have really had any life—and treats more briefly of eleven others. Her method of presentation could hardly be less inspiring. She devotes 150 pages to New York. She digests and abstracts every bill introduced (whether passed or not), every legislative document, every report of a housing agency, every legal case, each annual budget. Nowhere is there revealed the single, sharp insight which would have shown the futility of this picking over of dry bones: Governor Smith's Commission on Housing and Regional Planning in 1926

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proposed a comprehensive framework for credit, regulation, and promotion of housing; a hostile legislature deliberately hamstrung it, leaving a regulatory body with no credit. Not until 1938 was this mutilation overcome.

Miss Schaffter says that her book is a study in administration. She devotes an entire page to a break-down, year by year for seven years, by eleven objects of expenditure, of the budget of the Delaware State Housing Board—which averaged $4,174.02 a year. She recites the names of all members, past and present, of all state housing boards. Her bibliography of bills, budget recommendations, appropriation acts, reports, and decisions runs to eighty-eight pages.

All this tedious "research" warrants perhaps a monograph of seventy-five pages. Then at least one could say that this facet of the problem had received due recognition. The issuance of an 808-page compilation of working papers like this in war-time should cause concern to the Paper and Pulp Branch of the War Production Board.

CHARLES S. ASCHER.

National Housing Agency.

Will Germany Crack? BY PAUL HAGEN. (New York: Harper and Brothers. 1942. Pp. xvii, 283. $2.75.)

This book describes the changes in Germany since the invasion of the U.S.S.R. Its purpose "is to illustrate and bring the difficulties in which the Hitler régime finds itself into sharper focus." The author uses the pseudonym "Paul Hagen," and he is vouched for by Mr. Elmer Davis in an introduction as "a man whom I have known as a thorough and judicious reporter" for some years. As research director for the American Friends of German Freedom under the chairmanship of Dr. Reinhold Niebuhr, Mr. Hagen has been in direct contact with part of the underground movement in Germany.

The reader will find in this timely volume much valuable factual material about the status of labor, of agriculture, and of business. From it one gets a very complete picture of the effects of the Nazi régime on all classes of German society, as well as a graphic description of the ravages of the New Order in Europe. I find the chapters on labor and agriculture particularly good, probably because the author is more at home in discussing the social effects of Nazi rule than when he deals with governmental and administrative matters. Although his convincing material leads one quite naturally to feel the impending doom of the whole Nazi system, the author is careful to warn the reader that Germany will not fall to pieces from internal causes alone.

A very interesting chapter deals with "The Truth About the Generals'

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Revolt," but more evidence is needed before we have the proper basis for a sound judgment on this vital topic. The concluding chapter on political warfare is excellent. Here one finds a well reasoned argument in favor of European federation, and a sound strategy for enlisting the support of what Mr. Hagen calls "the revolutionary potential" in Germany and occupied Europe.

The author believes that any kind of monarchical restoration in Germany would be bad, and he thinks that Russian communism has nothing to offer the Germans by way of a sound solution of their problems. He also believes that German leadership will have to come from within Germany and not from the exiles now residing in this country. He carefully emphasizes that not all Germans are Nazis, and that there is a strong foundation in Germany for a modern democratic state, but not for an old-fashioned nineteenth-century liberal régime.

A very wide range of material is used in the book, some of it old to readers of "Germany Reports" but much of it new. The emphasis is placed on weaknesses in the home front in Germany, and therefore one should not turn to this book for an explanation of German successes. Although the Nazi party is frequently discussed, its place, and the place and importance of that other pillar of the German state—the bureaucracy—are not systematically treated. The book, however, is worth careful study. It is, as the sub-title indicates, "A Factual Report on Germany." It deals realistically with German conditions up to the past spring, and it emphasizes many of the factors which will help determine both the outcome of the war and the nature of the peace.

JAMES K. POLLOCK.

University of Michigan.

The Guilt of the German Army. By HANS ERNEST FRIED. (New York: The Macmillan Company. 1942. Pp. xiv, 426. $3.50.)

There are many explanations of National Socialism, most of which contain elements of truth. The present book, written by a Viennese scholar now associated with the Graduate Faculty of the New School for Social Research, focuses its attention on the responsibility of the professional army officers for Hitlerism. The thesis is not original, but it is here convincingly presented, with much new evidence.

Dr. Fried holds that German fascism and militarism are the same phenomenon. "National Socialism represents resurgent German militarism, because National Socialism was the most effective mechanism . . . . for the reëstablishment of the strength, the influence, and the program of the German generals" (p. 6). Such a resurgence got started in the early post-war years because of the delayed demobilization of the career officers. The rank and file of the army who wanted peace went home as quickly as pos-

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sible, but the officers who wanted power did not demobilize either in spirit or in fact. Whether in the active service of the *Reichswehr* or "retired" on the very generous pensions provided by the Weimar Republic, they remained subversive and hostile to the democratic régime, although operating under the equivocal slogan—"political neutrality of the army." The author's statistics on the number of professional officers and the case studies as to what they did after 1918 are extremely illuminating.

Another valuable section of the volume deals with the shock trooper and the free corps. The officers formed an unusually large proportion of the shock troops developed during the First World War. Shock troop traditions of brutality, contempt for foe and friend alike, and complete disregard of all conventions were transmitted to and perpetuated by the free corps of the early post-war years, and were finally crystallized in the ruthless brown and black shirted battalions of National Socialism, Much has been written about the proletarian character of the S. A., but Fried shows conclusively that the ex-army officers predominated in the posts of command. The same observation can be made of the National Socialist Labor Service. However, it does not follow that the party is merely the instrumentality of the army. Both are "tools each of the other, but neither is master of the other" (p. 355).

Dr. Fried concludes his excellent historical analysis with a program for the future which will avoid the mistakes of last time. The aim of World War II is not primarily to disarm Germany, but to destroy German militarism. Allied occupation of Germany will not accomplish this, but is only too likely to lay the basis for a new militaristic revival. The best protection will be for the Germans themselves to develop a democratic army from which all the old careerist elements have been eliminated. It is admitted that such a task will not be easy.

A reading of the book suggests several comments. While Adolf Hitler's name appears on various pages, it may be asked whether the author has done full justice to Hitler's evil genius. One can reject the great-man theory of history and still hold that without Hitler there would have been no Third Reich. Secondly, the responsibility of the Allied Powers, particularly in the crucial years from the Armistice through the occupation of the Ruhr, should not be overlooked. It was then that the foundations of resurgent militarism were laid. Finally, while agreeing that the military occupation of all Germany is undesirable, the reviewer does not see how a military occupation of the eastern and western frontier areas can be avoided, at least during the transition period. In spite of these criticisms, Dr. Fried is to be commended for his interesting, scholarly, and timely study.

ROGER H. WELLS.

Bryn Mawr College.

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Democratic Ideals and Reality. By Sir Halford J. Mackinder. (New York: Henry Holt and Company. 1942. Pp. xxvi, 219. $1.90.)

Geopolitik: Doctrine of National Self-Sufficiency and Empire. By Johannes Mattern. (Baltimore: Johns Hopkins University Press. 1942. Pp. 139. $1.50.)

Mackinder's book, one of the germinal works in geopolitics, first appeared in 1919. In it the author, a prominent professor of geography in the London School of Economics, set forth his views of the "realities" which the then current "democratic idealism" must face if post-war reconstruction was to establish bases of permanent peace. The book is now reprinted unchanged, save for a foreword by Major George Fielding Eliot and an introduction by Edward Mead Earle, as if to remind us that since "democratic idealism" did not successfully cope with "reality" at the close of World War I, the same problems again face us.

It is not often that a book dealing with the fluctuating subject-matter of international relations can stand reëxamination after a quarter-century. That this book does so successfully is due to the unusual insight and prescience of the author, and to the fact that its views are derived from an Olympian contemplation of the great elemental inertias or "constants" of human life—population, geographical location, productive power, and the complex characteristics of nations as "going concerns" (a favorite phrase of the author).

The "realities" which must be faced are certain inexorable geographic facts which sooner or later must be appreciated by peoples as well as by diplomats. These are that the land-connected continents of Europe, Asia, and Africa constitute a single unit—the World-Island—and the continents of North and South America and Australia are merely satellite Islands. Four-fifths of the world's population, area, and resources are in the World-Island. The key to the control of the World-Island is the Heartland, a region occupying, roughly, Eastern Europe. The great reality which must be soberly faced by treaty-makers is in the formula: "Who rules East Europe commands the Heartland; Who rules the Heartland commands the World-Island; Who rules the World-Island commands the World." Such a domination of the World-Island could easily be the basis for an invincible sea-power; for sea-power consists in the number and location of secure bases. From the landman's viewpoint, the logic of such unity is even greater; for while the network of land transport runs, or will run, through the Heartland, the segments of the World-Island are quite separate save as they meet in the same area.

To the author, the historic rivalry of Germany and Russia for the control of the Heartland is explained by these theories. As crystallized in this book, they are said to have shaped the thinking of Haushofer and other

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dominant figures among German geopoliticians. Indeed sections of the book read startlingly like a blue-print of current German plans of conquest, including such a step as the seizure of Greece purely as a detail in military strategy.

Despite the clarity with which the author analyzes the problem, his suggestion for its solution is disappointing: the Heartland must be divided among three, not two, state-systems. A group of buffer-states must be set up between Germany and Russia. Unfortunately, that proved not to be the solution. Convincing as is the author's review of "realities," his suggestions for their reconciliation with "idealism" are not so fruitful. Perhaps it is because the statement of the problem has not taken sufficiently into consideration factors of personality, invention (airpower?), or chance. Nevertheless, this remarkable book should be required reading both for those whose fingers itch to re-shape the world and for those who do not believe it can be done at all.

Professor Mattern's book is less an exposition than a moral evaluation of geopolitics. It is not far wrong to say that it is an effort to debunk geopolitics. This he does by showing in several chapters that geopolitics is not a current German discovery, that its literature does not begin with Haushofer but with Gobineau, Chamberlain, Ratzel, and even earlier writers. In fact, the whole conception is the old device of empire-building masquerading under a new name. The author shows that currently geopolitics, while it differs from imperialism by such complicating factors as totalitarian governments, industrialization, and the demands for economic self-sufficiency, is basically the same thing.

After performing the useful services of robbing geopolitics of novelty and glamour and of reviewing the literature of the field, it is disappointing that the author cannot offer a more hopeful prospect for other bases for the guidance of national policy. If geopolitics is less than ideal morally, the problem is to find ways and means by which the "have" and "have-not" nations may live together in peace. Otherwise we are forced to accept the old adage that what cannot be cured must be endured. While Professor Mattern is entirely convincing as to the impossibility of obtaining peace through doctrines of geopolitics, it is depressing that no hope is held out for better foundations of international relations.

HAROLD W. STOKE.

University of Wisconsin.

The Problems of Lasting Peace. By HERBERT HOOVER AND HUGH GIBSON. (Garden City, New York: Doubleday, Doran and Company, Inc. 1942. Pp. viii, 295. $2.00.)

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Winning Both the War and the Peace. EDITED BY ERNEST MINOR PATTERSON. Annals of the American Academy of Political and Social Science, Volume 222. July, 1942. (Philadelphia: American Academy of Political and Social Science. Pp. vii, 252. $2.00.)

The first of these two volumes boasts an unusual authorship. Two figures recently prominent in American public life, one as cabinet officer and president, the other as diplomat, have tried to investigate the technique of peace-making. They write, not as men who actually wrestled with such problems, but as lay students of history and politics. No diplomatic revelations appear. The book is for the common citizen—simple, clear, matter-of-fact, and a bit repetitious, since a thesis is to be upheld. The thesis is the familiar one that throughout modern European history the forces tending to cause war have been stronger than those making for peace. Quite possibly they may triumph again after the second World War. In some detail, the operation of these forces, designated as ideologies, economic pressures, nationalism, militarism, imperialism, and the complexes of fear, hate, and revenge, is traced against the historical background of three hundred years, with emphasis on the past quarter-century. If the argument lacks novelty, it is none the less sound and should not be disregarded by any would-be architect of a warless world. To this simplification of history, two-thirds of the book is devoted. In the few remaining chapters, ways and means of making peace are examined. In general, they approximate the Wilsonian program of 1919, with emphasis on political democracy, economic liberty, and avoidance of the errors of Versailles. Much wisdom is here. But is the program adequate to the needs of the 1940's? Is not the world experiencing a revolution which calls for new designs in international relations? In any case, the forces of war and the conservative tradition in politics and economics must be confronted in any scheme for genuine peace. It is the merit of the book to stress this fundamental fact.

The April meeting of the American Academy of Political and Social Science considered the problem of winning the war as well as that of making peace. Included among the speakers was an array of government officials, chiefly from abroad, as well as several journalists and professors. Concerned chiefly with problems of the week or month, the journalists contributed little of permanent interest. The officials generally were under the usual restraints, and their papers are informative mainly as they reflect the nationalism of their respective peoples. Notable exceptions were the Russian ambassador, who bluntly appealed for immediate aid to Russia, and Jan Masaryk, whose enlightened views contrasted sharply with the strident nationalism manifested by some others of the official group. Taraknath Das presented an excellent analysis of "Asia's Part in

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War and Peace." The most penetrating discussions were those of D. W. Brogan on "A Political Scientist and World Problems" and Nicholas Doman on "The World We Approach." Doman regards nationalism as destined to be replaced by a democratic federation of states possessing political and military power. No speaker appeared to doubt that the chief issue of the war is freedom or slavery. In an appendix appear several papers on post-war economic problems in Southern California.

G. LEIGHTON LAFUZE.

John B. Stetson University.

Problems of Post-War Reconstruction. EDITED BY HENRY P. JORDAN. (Washington: American Council on Public Affairs. 1942. Pp. xx, 292. Cloth $3.25, Paper $2.75.)

Immediately after the outbreak of the war in Europe, a seminar was set up in the graduate school of New York University for the study of post-war reconstruction problems. The present symposium makes its appearance as an outgrowth of studies centered in that seminar. The nature of the volume is indicated by its title. Thirteen contributors pool their efforts to analyze problems, which, in the words of the editor, "ought to form part of any serious discussion of the peace to follow the Second World War." No pretense is made at facing all possible, or even all major, issues. No consideration is given, for instance, to the problems of the war in Asia as such. Whatever may be the effects of the fall of Singapore upon the relations of the subject peoples of the East to the imperialist states of the West, they are not here faced. It is to the problems raised by the war in Europe and its repercussions in the Western Hemisphere that the volume addresses itself. Its purpose, again quoting the editor, "is to raise issues and problems—not to dispose of them." Within the limits thus set, the task has been competently, and in spots brilliantly, done.

The book is divided into five parts. Clyde Eagleton and Howard Becker open with an analysis of problems, general in nature, under the heading "In Quest of Peace." This is followed by an attack upon specific "Problems of the Old World" by Kenneth J. Deacon, Oscar J. Falnes, and Hans Aufricht, and of "The Western Hemisphere" by Donald W. McConnell, Erich Hula, and Henry P. Jordan. Four contributors—Lois MacDonald, George S. Hirschland, Richard Schueller, and Harvey Pinney—treat problems of "Government and Business." Charles Hodges concludes on "The Paradox of Power Politics."

Among the problems given thoughtful consideration is that of the position of the state in the forthcoming peace. There is a disposition on the part of some of the writers to assume that the growing interdependence of

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peoples has made both the territorial sovereignty (with its predilection toward "national introversion," as Dr. Hirschland styles it) and the state system obsolete. As Professor Jordan sees it, the present upheaval not only emanates from the state system, but is also symptomatic of its eclipse. On the obsolescence of the state, it is Professor Eagleton, however, who is most persuasively articulate. National sovereignty, he says, is no longer sufficient in itself, and human beings must go beyond the state in search of an instrument more capable of caring for their needs. He does not doubt that war can be brought under control, but only by means of effective international government in which the right and power of coercion are denied to member states in the community of nations. He says flatly that "there is no other solution." Professor Becker, however, warns that the concept of sovereignty has not lost its grip. Whatever the state may have lost of its previous justification, he sees little likelihood of its early disappearance.

The book ends on a pessimistic note. Professor Hodges sees in the coming peace an armed truce dictated by the momentary emotions of victory in which the perpetuation of the war system will be camouflaged behind legal and well-meaning abstractions as a just peace.

RALPH A. NOREM.

Oshkosh Teachers College.

Agenda for a Post-War World. By J. B. CONDLIFFE. (New York: W. W. Norton Company. 1942. Pp. 232. $2.50.)

This book is a practical and sober discussion of the troublesome issues in international trade and finance which the victors will have to tackle once the war is won. It contains a program of action which avoids utopian or doctrinaire extremes; it will not satisfy the Socialist planners or the exponents of *laissez-faire*, if such there be. What it proposes is, in the words of the author, "a new framework of regulation within which trade may again proceed freely."

To move abruptly from war-time control to a competitive economy, Professor Condliffe states, would be to invite disaster. *Laissez-faire* cannot restore a sound international equilibrium of prices or prevent the kind of strains on the balances of payment which, in the past, have driven countries into policies of restrictive nationalism. Demobilization of war industries, the opening of new frontiers for investment, the disposal of rising agricultural surpluses, and the necessary extension of social security will call, so the author explains, not only for intelligent government policies but for close collaboration between governments. He would prefer to see tariffs and monetary policies directed by international institutions, such

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as an International Tariff Commission, with power to impose sanctions, even against recalcitrant great powers. But realizing the difficulties of establishing and controlling such bodies and of getting the United States or any other powerful nation to give up its autonomy to a supra-national body, he calls upon Great Britain and the United States to harmonize their efforts, to adjust their currencies, and to restore an expanding system of multilateral trade by common action. Nothing is said of the future rôle of the Soviet Union.

If Professor Condliffe lays emphasis on the need of control, both national and international, particularly during the transition period, he does not therefore expect salvation from extensive regulation. International commodity agreements, he points out, have often enough aggravated rather than solved the problem of surpluses. Uncoördinated and restrictive national policies have intensified the crisis in international trade, and have certainly not prevented in the past the fatal excesses of inflation and deflation. The author expects a great revulsion against bureaucracy in all its forms. "This," he exclaims, "is not a war to make the world safe for bureaucracy."

The *Agenda* is not a blue-print for a peace settlement. Political questions are touched only in so far as they impinge on economic reconstruction. Thus the regional idea, "tainted," as the author says, "with the continentalism of Geo-politik," is condemned because it is impossible and undesirable to carve out limited areas of economic self-sufficiency.

The proposal to make the peace "politically hard but economically generous" and to interject a transition period before drawing up final peace terms has been heard before; but Professor Condliffe adds a useful warning against a "peace of vengeance and hatred, however justified," and calls for a rapid and clear-cut decision on boundaries and other purely political matters.

The author throws much light on a series of economic problems which the peacemakers will have to consider and makes a strong case for international economic collaboration and for "collaborative machinery," without indulging in internationalist wish-dreaming. Convinced that other countries will go as far as, but no farther than, the United States in accepting limitations of economic sovereignty, he appeals to the American people to renounce the traditional but shortsighted privilege of shaping commercial, monetary, and credit policies without prior agreement with others.

Anyone interested in the shaping of the post-war economic settlement will wish to consult this stimulating and realistic *Agenda*.

ARNOLD WOLFERS.

Yale University.

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Protection of Coastal Fisheries Under International Law. By Stefan A. Riesenfeld. (Washington: Carnegie Endowment for International Peace. 1942. Pp. xii, 296. $2.00.)

This investigation was originally undertaken to aid Professor Joseph W. Bingham in the preparation of his report on the legal status of the North Pacific fisheries—a report due to the initiative of the Institute of Pacific Relations. Dr. Riesenfeld was invited to help in collecting the material, and the task was considered to make requisite an examination of the question of coastal fisheries under international law in general. The result of this investigation does not, the author modestly states, "pretend to be more than an annotated digest and bibliography." Notwithstanding this disclaimer, the work may well serve as a model for students of international relations in the pursuit of their investigations and the formulation of their results.

The author divides his study into three parts devoted to the "three main sources: the works of legal scholars, state practice, and international adjudications." But with a fine sense of proportion and of historical values he limits his exhaustive investigation to the last hundred and fifty years and gives only a brief discussion of the chief authorities of an earlier date. This limitation is justified because "the existence of a right to coastal fisheries is connected intimately with the doctrine of the freedom of the sea and territorial waters, which did not really crystallize until the beginning of the eighteenth century." Another reason given is that the admirable study of Professor Percy Thomas Fenn published in 1926, entitled *The Origin of the Right of Fisheries in Territorial Waters*, "covers the main text writers from classical times to the Peace of Westphalia (1648), and indicates the roots of the doctrines which govern modern practice and thought."

Professor Riesenfeld does not fall into the present erroneous tendency to underestimate the importance of the influence of the text writers, and has given a very extensive collection of extracts, which are thus made convenient to examine and illuminating to consider. The course of this exegesis he interlards with his own valuable comments, which reveal the depth of his science and the breadth of his views. Notwithstanding the recognition of the importance of the views of writers, the space devoted to state practice is appropriately greater. In a study of this rather technical nature, the author is no doubt justified in giving the extracts in the original language unaccompanied by an English translation.

In a careful study of "The Extent of Jurisdiction in Coastal Waters," published four years ago, Commander Christopher B. V. Meyer pointed out that the development of the international rule in regard to the limit of territorial waters has been influenced primarily by considerations of

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the need felt by the great maritime states to determine the limits within which the respect for, and enforcement of, neutrality would be required. More recently, the increased importance of coastal fisheries and the need to provide for their protection has brought into play new considerations, as has the growing need to prevent smuggling. Professor Bingham truly says in his report: "If the exercise of governmental power beyond the three-mile limit is necessary to protect those fisheries against damage, the exercise of that power should be legitimate, just as a similar exercise of power in protection of the revenue laws or defense of its neutral coasts against belligerent activities or unlawful depredations of other sorts is legitimate" (p. 41). In sum, the question of territorial waters would seem conceived to test the inadequacy of the whole theory of absolute sovereignty and its correlative application to marginal seas.

In his *Law of Territorial Waters and Maritime Jurisdiction*, Professor Philip C. Jessup has said: "International law itself is a restriction upon and a denial of absolute sovereignty," and he has made a real contribution and offered a solution of one phase of this problem with his proposal to differentiate between the right of maritime jurisdiction and the right of innocent passage. This does not, however, meet such a problem as the need to protect our runs of Alaska salmon from the destructive Japanese fisheries on the high seas. Professor Riesenfeld does not attempt to formulate principles appropriate for a solution of the difficulty, but he does offer certain helpful suggestions.

Truly the regulation of territorial waters and of coastal fisheries is seen to be well adapted to show up the weaknesses of the theory of absolute sovereignty and to demonstrate the need of the limitation of national rights when necessary to safeguard a common interest of all states or to prevent disproportionate damage to the national or vested interests of one of them.

After an examination of this material and enlightened comments, it is interesting to read the remark of Lord Alverstone in the course of his decision in the West-Rand Central Gold Mining Company Case to the effect that the limits as to territorial waters is one of the few rules of international law which is "least open to doubt and question." Compare this with what Dr. Riesenfeld writes (p. 280): "Moreover, there is not a single nation which has always and for all purposes adhered to the three-mile rule." And this investigator of the topic finds (p. 279) that all three groups of the authorities surveyed, text writers, state practice, and international adjudications, indubitably confirm that the three-mile rule is not so well settled as is sometimes asserted. The solution of this difficult problem is, as the author states (p. 282), to "be found only in the application of international law as a means of adjustment of the various national interests in the spirit of a community of nations;" in other words, the rule

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of reason, the general principle of tolerance which lies at the basis of every society—that each in the pursuit of its apparent interests or rights should evince a due consideration for the relative importance of the rights and interests of his neighbor, which is equivalent to the recognition of the obligation to accept a reasonable compromise.

ELLERY C. STOWELL.

The American University.

The American Way of Life; Our Institutional Patterns and Social Problems. By HARRY ELMER BARNES AND OREEN M. RUEDI. (New York: Prentice-Hall, Inc. 1942. Pp. xxi, 802. $5.00.)

According to the preface, "this book is offered as an introduction to the state of American life in the current period of war and world change. It covers both our leading institutions and the outstanding social problems which beset us . . . in the most critical and dynamic period of human experience," beyond which we have the choice of "either utopia or social collapse." But the happier of these alternatives cannot be ours if as heretofore "in an age of dynamos, we seek to direct society by windmill thought and action in the institutional realm. This so-called cultural lag lies at the heart of all our ills today." On page 691, the authors say that "there is only one way which will enable us to preserve our democracy and liberty and yet solve our economic and social problems. This is what we have called the Middle Way."

While the facts, the sequences, and the ideology of this volume are derived from two recently published books by Dr. Barnes—*Society in Transition* and *Social Institutions*—and his forthcoming *Programs of Social and Economic Reconstruction*, the joint authors have produced a work which is considerably de-Barnesed.

The volume is essentially an introductory orientation in contemporary American problems. It gives no unified, generalized picture of the principles and ideals on which the American way of life is built and in which it finds its compass. Rather, it deals with the evolution of society in general and American society in particular and the vital problems with which these societies are struggling, among them waste and conservation, capitalism, politics, poverty, crime, minority races, dictatorship, war and peace. These problems are grouped into seven parts, preceded in Part I by three chapters on the Historical Background and followed in Part IX by three chapters on Programs of Economic and Social Reconstruction.

What is undertaken is interestingly and on the whole successfully done. There are occasional factual errors. As an example may be cited the summary of the recent immigration laws, on page 137, in which the emergency law of 1921 and the temporary part of the law of 1924 are badly confused with the largely omitted provisions of the permanent national origins

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law. While the extreme difficulties inherent in the task of apportioning the available space among the numerous problems considered are obvious, the treatment seems distressingly inadequate in several places, as for instance the little fragments of which the description of the governmental structure of the United States consists on pages 261 and 262. The style and manner of presentation are clear, simple (in some places even elementary), and reasonably objective, but still provocative. Pictures, graphs, and charts enliven and elucidate the text. Closing each chapter is a helpful summary. At the end of the volume are twenty-six pages of selected references and a general index.

This is a first-rate book, valuable both to the general citizen and to the academic student in senior high school or junior college either as a textbook or as general required reading.

ARNOLD J. LIEN.

Washington University.

BRIEFER NOTICES

AMERICAN GOVERNMENT AND POLITICS

The title of Professor Thomas H. Reed's *Federal-State-Local Fiscal Relations* (Municipal Finance Officers Association of the United States and Canada, pp. iv, 61, $1.00) is somewhat misleading. Instead of examining the intricate fiscal relations that have grown up between our three "levels" of government, Professor Reed, out of the richness of his experience, has written a provocative discussion of municipal problems. His thesis may be stated as follows: (1) demands upon local government for services have increased more rapidly than have local sources of revenue; (2) the fiscal plight of the local governments can be blamed in part upon the federal and state governments, which have imposed burdens upon the localities, have preëmpted some sources of revenue for themselves, and have placed limitations upon the power of local governments to tax; (3) grants-in-aid, instead of easing the situation, have made it worse, since they usually require the local governments to match the grants on some basis, thus increasing the amounts which must be raised by local taxation; (4) in addition to increasing financial burdens, grants-in-aid have increased state and federal supervision over the localities, thus threatening the foundations of local self-government; and (5) the national and state governments should make more generous grants to the local governments, but should attach fewer conditions as to matching and purpose of expenditure. This booklet was written as a report for the Committee on Local Government Activities and Revenues of the Municipal Finance Officers Association of the United States and Canada, and was written entirely from the viewpoint of a municipal official. The political and financial problems of the

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national and state governments were ignored altogether, and little recognition is accorded to the natural reluctance of the nation and the states to appropriate money for the use of local units without some stipulation as to the manner and purpose of expenditure. The conclusions will, no doubt, meet with hearty approval from local officials who would like to be able to spend more money, with less state and federal supervision, but without having to accept the onus of increasing the local tax levies; but they will scarcely satisfy the student who is interested in the broader aspects of public finance and public administration.—ROGER V. SHUMATE.

While seeking to present a timely examination of that important American political institution, the free ballot, Spencer D. Albright has produced a scholarly little volume in his *The American Ballot* (American Council on Public Affairs, pp. 153, $2.50). The student of American government will find this a useful manual of ballot forms and election laws. The general reader may find it difficult, because the text is literally peppered with facts and figures setting forth the variations in ballot features found in the states. Dr. Albright has compressed a large amount of research material in a comparatively small space. As the author indicates in his chapter on "Ballot Patterns," the subject is complicated because "the contents and arrangement of the face of the paper ballot used in general elections differ in each of the forty-eight states." The adaptation of the Australian ballot to the needs of the American states is described at some length. In a chapter devoted to voting machines, he carefully weighs the advantages and disadvantages of their adoption. Although the writer apparently favors voting machines, he avoids any very enthusiastic reference to their use. Problems in their operation and legislation permitting their adoption are explained with clarity. In the chapter on "The Ballot in Presidential Elections," the author makes a strong case for the presidential short ballot, wherein the names of presidential electors are left off the ballot and the names of presidential and vice-presidential candidates are substituted. The two chapters devoted to the primary ballot and recent trends are the easiest to read. One trend noted is that general election ballots are growing shorter. Independence in voting is being encouraged by increased use of the open primary and of non-partisan elections. Little discussion is given to balloting on measures other than to their positions on the ballot paper. The various types of ballots and certain trends in ballot forms are presented by means of helpful samples and tables.—WINSTON W. CROUCH.

It is peculiarly fitting, at a time when the rights of minorities are being blotted out by war, that the United States should not only reassert adherence to and faith in the principles of democratic government, but also give actual proof of sincerity by adopting an enlightened policy of gov-

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ernance for our oldest minority group, the Indians. To aid in the implementation of this policy, the Department of the Interior has published a *Handbook of Federal Indian Law* (Government Printing Office, pp. xxiv, 662, $2.00). The text was prepared by Felix S. Cohen, an eminent authority in the field of jurisprudence and chairman of the Board of Appeals in the Department. The foreword was written by Secretary Harold L. Ickes, and the interpretative introduction by Nathan R. Margold, solicitor for the Department. The subject-matter of the chapters falls into the following general fields: the class of persons and the places with which the federal Indian law deals; the basic strands of development—administration, treaty-making, and legislation—that make up the federal Indian law; the governmental source of legal relations; substantive rights, powers, privileges, and immunities of parties and of individuals; problems of court jurisdiction in the field of criminal and of civil law. The Pueblos of New Mexico, the Indians of New York, and the natives of Alaska are treated in separate chapters. In the final chapter, the author discusses special laws relating to Oklahoma. The discussion throughout is completely documented. The supplement contains a tribal index of materials on Indian law, tables of statutes and treaties, federal cases, Interior Department rulings, Attorney-Generals' opinions, and an exhaustive bibliography. The scholarly study not only reveals what the law relating to the Indian is today, but also shows the antecedent conditions out of which it has evolved. For the Indian, the *Handbook* will be a valuable guide in determining his rights and privileges, and for the administrators of the Indian Service it sets a high standard of attainment. To the laymen, it will give a truer perspective and a better knowledge of the Indian, whose legal position in the scheme of our government is so little understood and even less appreciated.—JOHN P. SENNING.

The first edition of *A Diplomatic History of the American People* (F. S. Crofts and Co., pp. xxvi, 864, $4.25), by Thomas A. Bailey, was published in 1940. The present new edition adds to the usefulness of the book by the insertion of two new chapters dealing with our foreign relations from September, 1939, to our entry into the war in December, 1941. Only minor changes have been made in the other chapters. A bibliographical appendix has brought the reference materials up to date. The two new chapters deal with a highly controversial period of our diplomacy in a dispassionate manner which is most creditable, and they are, on the whole, a satisfactory account of those two stormy years. If the author has slighted any part of the story, it is in describing our Latin-American relationships. Following his approach throughout the book, Professor Bailey has given a great deal of attention in these two chapters to American public opinion in relation to the war. His summary of "Why the War Came to America," in the

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final chapter, is a convincing statement of the American people's fear of Hitler and their suspicion of his ambitions in this hemisphere. The most significant contribution of both editions of Professor Bailey's book is his stress upon public opinion in relation to foreign policies. It is doubtful, however, whether the contents of the volume support the thesis stated in the preface that in a democracy "public opinion determines fundamental policy." The author rarely tries to show that a foreign policy arose in answer to a popular demand for it. He is able to show that the negotiation of the Pact of Paris in 1928 was stimulated by a lively public interest, but he admits that press opinion and polls of public opinion were often at variance with policies, as in the issue of American membership in the World Court. On most issues, it is, of course, impossible to give any statement of dominant American opinion. In fact, the volume seems rather to support than deny the doctrine that foreign policies, even in a democracy, come from foreign offices rather than from the people. Professor Bailey's stress upon newspaper opinions, polls of public thinking, and public speeches is none the less a contribution. It gives the subject a reality often lacking in textbooks. Problems of foreign policy are vitalized more than is possible when official documents, with all their abstractions, are relied upon as the main source. Coupled with an entertaining style, this approach has produced a text of unusual appeal, one of the best in its field.—NORMAN L. HILL.

Students of American government, teachers who try to interpret current affairs, and citizens who want to know exactly what changes the war has wrought should be grateful to David O. Walter for summarizing the "principal statutes, orders, court decisions, and statements of policy" and organizing much fugitive information in *American Government at War* (Chicago: Richard D. Irwin, Inc., pp. x, 235, $1.25). In the mobilization of economic resources to meet the exigencies of war, the government, inexperienced in such national planning, uncertain of the ultimate needs, and reluctant to adopt dictatorial methods, has done a lot of fumbling which is indicated by the numerous agencies with interlocking personnel and overlapping authority. Meeting such a dire emergency without violating the limitations of responsible democracy has raised many questions of legality, but the war powers of Congress and the President have been interpreted broadly enough to justify conscription of men for military service, allocation of manpower in industry, restriction of aliens, suppression of sabotage, censorship of news, curtailment of civil liberty, control of municipal functions, and the formation of military and economic alliances with foreign countries. The chapter on the impact of war on state and local governments, with special reference to civilian defense, was written by Dr. Walter's colleague, Professor Lashley G. Harvey, also of the Univer-

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sity of New Hampshire. The book is so tightly packed with facts that there is little room for comment or interpretation. It is valuable for reference, but hard to read because the details obstruct the general view. Perhaps the chapters on aliens, civil liberties, and the political system in war-time should be noted as exceptions. Foreign relations are described under the suggestive title of "United Nations." Several charts of administrative organization are illuminating, though they soon become obsolete. Indeed, this paper-bound volume is so useful that revised editions ought to be published frequently.—JOHN ELY BRIGGS.

The expansion in recent years of the scope and authority of administrative tribunals throughout the nation has resulted in increased efforts on the part of extreme legalists to bring complete judicial review of both law and fact over all administrative decisions. These efforts have not resulted, as was their original goal, in the enactment of legislation burdening administrative agencies; the net result rather has been the precipitation of exhaustive official examinations of administrative procedures on both national and state levels. Such a study is Robert M. Benjamin's *Administrative Adjudication in the State of New York* (Albany, N. Y., Report to Governor Herbert H. Lehman, pp. 369). The study was made under the Governor's authorization and was the work of a sizeable staff headed by the author. The report is introduced by a chapter of general conclusions and recommendations. Short chapters deal with quasi-legislative procedure, judicial review, and a most interesting recommendation for a division of administrative procedure appended to the Executive Office and performing a continuous research and advisory function for the whole of the administrative branch. Three-fourths of the volume is devoted to a comprehensive analysis of quasi-judicial procedure. The author reaches many constructive conclusions, too numerous and involved for discussion here. The treatment is specific, replete with illustrations from the administrative law and experience of New York. Administrative law is more advanced and administrative experience is richer in New York than in most states. Other states, nevertheless, have much to learn from this report. In particular, they can learn constructive solutions for many perplexing administrative problems. In the large, they may see that the true solution of the many complexities arising in administrative law cannot be achieved by yielding to nostalgic yearning for the simple day when the courts alone exercised judicial functions.—JOSEPH M. RAY.

Washington-Field Relationships in the Federal Service (Graduate School, U. S. Department of Agriculture, pp. 60, $0.35) is an extremely good, though brief, collection of common sense essays on an ever-vital subject. Donald C. Stone vividly discloses the viewpoints of both field officers and

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Washington officials in a "tour" of the offices of representatives of each group. Earl W. Loveridge and Peter Keplinger discuss Washington-field relationships in a relatively well-established federal agency, the Forest Service. W. L. Mitchell does the same for the much newer Social Security Board. James W. Fesler concludes the pamphlet with a provocative discussion of interdepartmental relations in the field service of the federal government. The literature on Washington-field relations is still meagre in comparison with the immensity of the problems involved. This series of lectures adds one of the best down-to-earth contributions to the accumulation known to the writer. Each of the contributors has evidently been on the scene of action sufficiently long to be able to give a competent report of his observations. Unlike some of the literature in the field of public administration, this series of essays takes on no high-flown academic atmosphere. Instead, it presents a picture of the problems and complexities of increasing centralization in a manner that will be comprehensible to academicians and government employees alike.—CLAUDE E. HAWLEY.

Parity, Parity, Parity (Harvard Committee on Research in the Social Studies, pp. xi, 367, $2.00), by John D. Black, deals with a burning issue while the conflagration is raging. Its timeliness unavoidably places the author at certain disadvantages in that the rapidly changing scene makes some of his material out of date before the book reached its readers. The advantages of such a procedure greatly outweigh this handicap. The author has presented the results of his findings on a highly controversial question in time for consideration in the making of pressing policy decisions. The material is highly technical, but it is put up in the free flowing style of an accomplished journalist, including catch phrases, jests, and quips—some with barbs. Indications are that the book was written for laymen, including members of Congress. But the layman, including members of Congress, are likely to experience some little confusion over the great array of analytical data accompanied by the inevitable qualifications of the economist. The author concludes that the present method of determining parity works badly and leads to confusion. A whole array of substitutes are analyzed. "Necessary price"—a price necessary to induce the desired output—is favored as the best war-time substitute. Necessary prices are flexible prices designed to meet rapidly changing conditions. Little mention is made of the tendency for such a plan openly to invite pressure groups to intensify their battles in Congress and in the offices of the bureaucrats. The book makes a substantial contribution to a clearer understanding of the relative positions which agriculture, capital, and labor have occupied, and now occupy, in the nation's economy.—ASHER HOBSON.

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Young People in the Courts of New York State (Legislative Document, No. 55, 1942, pp. 309) is the fifth annual report to the legislature of the state of New York by the joint legislative committee to investigate children's court jurisdiction. This volume summarizes the discussions and findings of the earlier reports and presents recommendations arising from the deliberations of the joint committee for the five-year period (1938–42). An important section of the report reviews the legislative efforts of the committee and includes not only the texts of the bills enacted by the legislature but those that failed of passage during this period. The committee has rightfully recognized the indivisibility of the problem of juvenile delinquency and youthful criminality. It has, however, confined its attention to the two major considerations of increasing the age jurisdiction of the children's court and the problems of the adolescent offender. The committee specifically recommends that the age be maintained at the present level of sixteen years, although the tendency throughout the country during recent years has been toward raising the age jurisdiction of the juvenile courts. The committee prefers a system of youth courts with a socialized procedure to deal with the adolescent offender between the ages of sixteen and nineteen. In reaching its conclusions, such relevant matters were considered as the responsibility of the schools, the contribution of probation, and the effectiveness of the reform and correctional institutions in the state. The recommendations were made in the light of the preëminent position the state of New York occupies in the field of social legislation. It is therefore regrettable that in 1942 the New York legislature did not enact into law the more important recommendations of its committee. The war has highlighted this problem of delinquency and crime among minors. With the background presented and the problems set out by the committee, the state should lose no time in meeting a problem that becomes more acute each day.—BELLE ZELLER.

The History of Public Assistance in Chicago, 1833 to 1893 (University of Chicago Press, pp. ix, 183, $1.50), by James Brown, adds another study on public relief administration to the already sizable list of such monographs edited by the faculty of the School of Social Service Administration at the University of Chicago. This study shows the growth over a sixty-year period in public expenditures for the care of the necessitous and the inadequacies of administration. Despite the enormous increase in amounts spent, administration by committees rather than by responsible executives and political appointment of personnel continued. In contrast with many large Eastern cities which despaired over the graft and inefficiency of public officials and so did away with public relief, the principle of public relief for the care of the needy persisted in Chicago. Private agencies in Cook county restricted their services to designated groups. The report criticizes

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the lack of interest of the executives of these agencies and their influential boards in the administration of public assistance. The significance of this monograph for political scientists lies in its discussion of the deficiencies of some types of governmental organization for competent administration of public assistance. The problem is still with us. Public assistance statutes in many states continue to provide inadequate structure for wise administration of the millions of dollars spent on the various classes of persons needing public assistance.—HELEN I. CLARKE.

Books about Lincoln have been and will continue to be legion. But David M. Potter's *Lincoln and His Party in the Secession Crisis* (Yale University Press, pp. x, 408, $3.75) will always be ranked as a job of sound scholarship and penetrating analysis. At present, it is the authoritative work on the subject. Dr. Potter begins his main story with the critical year 1860 and ends it in April, 1861, when the guns at Sumter ended the secession drama. The author's thesis can be summarized briefly. At first, the Republicans would not believe that the Southern states would secede. When secession did take place, they were astonished. They thought that a minority of fire-eaters had seized control of the lower South. If the Republicans manifested an attitude of forbearance and the Administration avoided any acts that would create friction, the majority of Southern Unionists would eventually resume control and bring their states back into the Union. "Peaceable reconstruction," based upon an unrealistic analysis of the Southern situation, was the Republican formula to preserve the Union. This blind faith in Southern Unionism was the reason why the Republicans failed to offer a compromise plan to the South and why they opposed measures like the Crittenden Compromise. Dr. Potter is emphatic in stating that Lincoln and most of the Republican leaders did not refuse compromise because they wanted war. He refutes convincingly, in the reviewer's opinion, the late Professor Ramsdell's contention that Lincoln maneuvered the Confederacy into war at Sumter because Lincoln favored a recourse to hostilities.—T. HARRY WILLIAMS.

School of the Citizen Soldier (D. Appleton-Century Company, pp. xvi, 535, $2.40), edited by Lieutenant Colonel Robert A. Griffin, reveals to the general public the subject-matter of an educational project of the Second Army. The theme is the place of America in a world at war. The treatment is temperate, carefully organized, and, for the most part, well written. The soldier receives authoritative information on what we have stood for and why, and on who and how we are fighting. The book's divisions are Geography and World Trade, The World Crisis, American History and the Constitution, and The Armed Forces. Informative chapters on the Japanese and German armies and the place of propaganda in

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this conflict complete the analysis. Only a few minor defects were noted. The sentence structure in a few spots is inadequate. Certain historical dates and emphasis on universality of two-thirds majorities for Senate action may be questioned. The book is stimulating. It should be very helpful to citizen civilians as well as citizen soldiers. With understanding, the American people will develop an intelligent appreciation—followed by the goal sought by the editor and his commanding officer, i.e., efficient coöperation.—GEORGE C. ROBINSON.

Texts on conservation in America, beginning with President Van Hise's in 1910, have dealt with the technical matter of conservation. The numerous works on the subject appearing during the intervening years reflect an evolution of the concept of conservation ever widening to approach that of the general good through long-range planning. George T. Renner's *Conservation of National Resources* (John Wiley and Sons, Inc., pp. xi, 228, $2.75) varies from the usual texts in giving little attention to the technical aspects of conservation. Instead, in the first nine chapters it briefly presents the story of the growth of the conservation movement, classifies natural resources from the viewpoint of conservation, lists and evaluates the educational materials available, and examines the philosophy involved. It is probable that the treatment of these matters, rather cogently dealt with would have been more compelling if they had been expanded upon. Part II presents simply an outline of a course in conservation of resources. Four remaining chapters consider curriculum, methods, and materials. The work, primarily a syllabus, is intended to be useful chiefly to those in teacher-training and the teacher in service. A bibliography is presented at the end of each chapter.—H. C. COOK.

Before the entry of the United States into World War II, plans were drafted for a powder plant in a rural area of southern Indiana because of the Ohio River water supply and the labor available from marginal farms. Subsequent events led to the tripling of the original capacity and the addition of a bag loading plant. The effects of these projects on Charlestown, a nearby town of less than 1,000 inhabitants which quickly found itself crowded with as many as 6,000 people, have been canvassed by John E. Stoner and Oliver P. Field. Because the "impact of the development upon the combined health services . . . probably was more severe than upon any other branch of the administrative system," Professors Stoner and Field decided to publish the first section of their observations under the title *Public Health Services in an Indiana Defense Community* (Bureau of Government Research, Indiana University, pp. 83). This study is obviously a most timely one; its conclusions are not only informing but heartening to the political science fraternity, which has so closely identi-

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fied itself with democratic government. Readers of this monograph will undoubtedly look forward to the publication of the second part of the study, which will deal with general administrative services.—HAROLD ZINK.

Management Methods in City Government (International City Managers' Association, pp. v, 60, $1.50) is a manual of administrative practices in council-manager cities prepared by Orin F. Nolting, assistant director of the International City Managers' Association. As a basis for the study, questions were addressed to city managers to learn what methods had evolved from their experiences. But the study is not a mere tabulation of the practices employed, as it embodies the author's own views of what constitutes good administrative practice in such essential activities as the rôle of the manager in dealing with the public, the city council, and other local governmental bodies and his own staff, and his methods of maintaining internal controls. An orthodox exposition of practices generally accepted in theory if not universally followed, the booklet embodies in its few pages many helpful suggestions for those in administrative posts.—S. GALE LOWRIE.

Ronald E. Gregg's *Local Government Debts in Pennsylvania* (University of Pennsylvania Press, pp. xi, 169) is a survey of trends in local government indebtedness in Pennsylvania. The legal and administrative aspects of local debts, and state-local relations, are reviewed. The causes and character of local indebtedness are analyzed. On the basis of this analysis, the writer presents recommendations for improving the legal and administrative methods of control. Local debt problems require coöperation of both state and local governments. Local discretion, especially in matters of borrowing, should be left unimpaired. But there is need, as the writer shows, for more effective state supervision and control. For this purpose, he suggests some legal revision and administrative control by a state commission. The descriptive parts of the book are supported by tables and charts. Studies of this kind are of value in providing factual data for determining state-local fiscal policies, expecially in the matter of local indebtedness.— JAMES E. PATE.

INTERNATIONAL AFFAIRS

Edward H. Carr, of the University College of Wales, had already written a stimulating survey, *The Twenty Years Crisis, 1919–1939*, before publishing *Conditions of Peace* (Macmillan Co., pp. xxiv, 282, $2.50), in which he first discusses fundamental issues—political, economic, and moral—before trying to outline future policy. His attack throughout is positive. We failed after 1919 because we looked backward, seeking

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security and normalcy. In the last war and this one, all negative war aims are futile. Wilson's objectives did win the war, but were not dynamic enough afterwards. The attempt to revert to price and profit as regulators of the economic system was also doomed to fail. Hereafter we must reinterpret equality and liberty in economic terms and make political rights effective over economic power. A strong sense that obligations carry rights must also be developed. One of the most trenchant and convincing themes of the book is the failure of producer rule and the necessity of approaching all economic problems from the consumers' side. And, just as giving the producers all power ruined them, along with the community, "individual enterprise" was destroyed, not by "socialism," but by the innate trend of large-scale, competitive capitalism toward monopoly. The industrial combines gave us the alternative of collectivism, haphazard or controlled. Slowly, but surely, the concept "welfare" is replacing that of "wealth." Hereafter we must plan consumption and produce for it, regarding exports only as a way of paying for imports. Rejecting isolation from Europe or dominance of it by Britain as untenable, along with any balance of power, Carr argues strongly for an organization of Europe on an economic basis, one in which all peoples would have full cultural autonomy at home. They must "self-determine" themselves into a federated Europe in which both war potential and raw materials will be subject to international control, thus breaking the German monopoly of heavy industry. The German problem "remains insoluble until it is transplanted into a broader setting." There can be, he insists, reconciliation only by coöperation. Toward this end, he envisages full occupation of Germany before an armistice "if any," no punishment of Nazi leaders, continent-wide relief, and in Germany enforcement only of a necessary minimum of civil rights, reasonable freedom of speech and assembly, together with respect for processes of law and no racial discrimination—a rather large order, but bearable medicine, he believes, when administered along with the invigorating labors of a European Planning Authority. The entire book is a suggestive approach to a contructive handling of the post-war period. Everyone who hopes to avoid losing the peace again should read it, whether he approves of all details or not. No one can hope to encompass fully the extremely complicated reconstruction problems which we face, but Professor Carr has made his courageous and substantial contribution —one not to be overlooked.—D. F. FLEMING.

Sir George Young, who describes himself as a diplomat for twenty years and a democrat for twenty more, completed his *Federalism and Freedom* (Oxford University Press, pp. xvi, 204, $2.50) at the close of 1940; but before its publication in July, 1941, he added a brief postscript declaring that Germany's attack on Russia not only ensured England's

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winning the war, but also improved the feasibility of his plan for the politico-economic unification of the cockpit of Europe. Despite Downing Street's contention that such proposals give "aid and comfort to the king's enemies," the author offers his book "as a contribution to the War of Wits that is the best response to the brutalities of the Blitzkrieg" and a complete answer to "the German taunt that our policy is to divide and weaken Europe for our own ends." While Sir George agrees with Labor party and Malvern Conference demands for federation, he differs on one important point: each Great Power (the real reason why "the life of man is solitary, poor, nasty, brutish, and short") should be liquidated as a war-maker by federalization. The British Isles, France, and Germany would become federations of seven, six, and ten states, respectively; these plus the states of Polish, Bohemian, Scandinavian, Baltic, and Russian federations plus Sweden, Holland, Belgium, and European Turkey would comprise the Union of Free Federated Europe; and others could join later. Representation would be equal in the appointive Union Council and proportional in the elective Union Congress, while the Union constitution, in its political and economic features, might well be drafted according to Swiss and Portuguese models. Sir George's novel political scheme is accompanied by four critical chapters on remedial and reconstructive economics and the relation of war to law and peace. Besides hinting at an eventual union of continental federations, the author draws heavily on personal experience, recent history, and a keen sense of humor. —J. VAN DER ZEE.

Economic Problems of War and Its Aftermath (University of Chicago Press, pp. 197, $2.00), edited by Chester W. Wright, consists of seven lectures delivered under the Charles R. Walgreen Foundation at the University of Chicago. The lectures were addressed to the general public rather than to specialists, and were designed to promote a more intelligent public opinion on the problems dealt with. The first two lectures are historical. The first deals with and analyzes the effects of war on industrial development in Western Europe during the sixteenth and seventeenth centuries. The second is concerned with the previous experience of the United States in meeting the economic problems arising in war-time, and is particularly instructive on the lessons to be learned from past experience. Lecture 3 reviews the problems of war financing. Emphasis is placed upon the present danger of inflation, and bold action is urged in levying heavy taxes, even to the extent of using the admittedly inequitable retail sales tax, and resorting to compulsory loans. Problems of price control are considered in the fourth lecture. Particular reference is made to the serious administrative difficulties which the establishment of a general price ceiling would involve. The fifth lecture, on the war state, is devoted to a

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discussion of the growing centralization of power in the executive branch of the government and touches upon the reasons for this centralization. The sixth lecture is a provocative discussion of the war and the crisis of individualism. The final lecture is concerned with the structure of future society. Problems of future structure are posed—economic, governmental, and social—and suggestions as to trends are made. The author, however, is properly cautious and avoids a rigid formula.—NATHAN L. SILVERSTEIN.

What kind of a world is it going to be in the new post-war age? Is it to be a world of freedom and democracy, or one of exploitation, domination, and discrimination? Haridas T. Muzumdar's *The United Nations of the World* (Universal Publishing Co., pp. 288, $2.50) maintains that there can be no peace and freedom on earth as long as the empire system continues to plague mankind. The imperialists suffer from racial and political megalomania, and are a menace to the world. They must go. Dr. Muzumdar, whose subtitle is "How to Win the Peace," is of the opinion that there can never be durable peace in Asia and Africa, and consequently in the entire world, until imperialism is abolished. He concedes the possibility of the victorious United Nations, under the leadership of President Roosevelt, creating a new World Order on the basis of justice and liberty; but the weasel words of the Atlantic Charter and the Declaration of the United Nations give little hope at present that such an order will be forthcoming at the end of the war. In his analysis of the Charter, the author points out, for example, that its very first article "lends credence to the belief not only that is Britain intent upon maintaining her far-flung empire, but that she is also intent upon having America underwrite the *status quo*, at least so far as the British empire is concerned." Dr. Muzumdar, who is a follower of Mahatma Gandhi, pleads eloquently for all-out democracy and human brotherhood. Though somewhat poorly organized, there is much material in the volume which will be of interest and value to all who have a genuine feeling for human liberty. The book is quick with moral earnestness.—SUDHINDRA BOSE.

For the tribulations of Palestine since 1918 one may blame the Arabs, the Jews, or the British. Paul L. Hanna, in his *British Policy in Palestine* (American Council on Public Affairs, pp. xiii, 214, cloth $3.50, paper $3,00), picks the British. He admits that the Arabs have a claim to the territory under post-war assurances, that the wishes of the Arab inhabitants would not be disregarded, and under the McMahon-Husain correspondence, less by the wording in the latter case than by misinterpretation. He feels that the Jews have even a better claim since, as he says, everyone expected a Jewish state to be the natural outgrowth of the

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Jewish homeland provision of the Balfour Declaration (pp. 37, 157), and since "the creation of a Jewish national home became the primary duty of the mandatory" (p. 158). From this view he proceeds to be critical of all the British attempts to solve the problem because all such attempts were compromises. Such compromises were always foredoomed to failure, he says, because in every case the Arabs refused to become reconciled to the Jewish national home, i.e., Jewish state. According to the author, no solution is at present possible. But there were two alternatives immediately after 1918: the British could have repudiated either their promises to the Arabs or their promises to the Jews. The British, indeed, might have succeeded in repudiating the Balfour Declaration, without undue Jewish retaliation, but preferred not to try. On the other hand, it is questionable whether the establishment of a Jewish state of Palestine would not have provoked Moslem and Arab reactions which would have made the Near East even more inflammable today than it is. In any case, the British are rebuked in this volume for having tried to be fair and just rather than having attempted to be expedient. The footnotes are at the end of the book, which perhaps is a help to the casual reader but a nuisance for the student.—WILBUR W. WHITE.

POLITICAL THEORY AND MISCELLANEOUS

American political scientists have long been conscious of their responsibilities for citizenship training. They have also been keenly aware of the relatively meager results they can show after several decades of effort; for there is little evidence that the impact of political science upon public affairs is commensurate with the time and effort expended in the field, not only on the college level but on the elementary and secondary school levels as well. A perusal of *Education for Citizenship Responsibilities* (Princeton University Press, pp. x, 126), edited by Franklin R. Burdette, will bring some comfort to those political scientists who have a sense of shame that citizenship education has not been more successful, because in this little volume it is made very clear that many other departments, or fields, also have responsibilities for such training. An anthropologist, three economists, two geographers, two historians, a philosopher, and two sociologists, in addition to one political scientist, all insist that each of their respective fields plays an important rôle in education for citizenship responsibilities. The only contributor who does not express such insistence is the psychologist, who suggests merely that the possible use of appropriate psychological topics as effective aids in citizenship training should be thoroughly tested. Each contributor is convincing, and the reader will readily and properly conclude that the shortcomings of citizenship education cannot be charged against political science alone. Such a conclusion should not, of course, lessen the interest of the political scientist

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in the problem; it should rather stimulate him to greater coöperative team work with those in other fields. In fact, the political scientist might well be the leader in this coöperative team work. There is general agreement among the contributors that citizenship training should begin at an early age, and the implication is clear that the social sciences can be taught at all levels, from the primary grades through the graduate school. Philosophy, as it is defined by Professor W. E. Hocking, the contributor in this field, might well, according to this authority, begin with adolescence. None of the writers directly suggests indoctrination; in fact, emphasis is given at various points to the importance of teaching facts and truths. Nevertheless the reader will get the definite feeling that the net results of the total suggestions from the various fields would include a certain amount of indoctrination of the values of the democratic way of life. Professor Hocking, for example, suggests that the educator must not only "encourage the youthful ideal of being completely rational," but also "correct the excessive zeal of the mind which supposes that it can prove everthing which is worth knowing." The book is recommended to all who are interested in making American citizenship more intelligent and responsible, and is especially recommended to social scientists, to school administrators, and to members of curriculum committees.—BEN A. ARNESON.

In his *The Development of the Labor Movement in Great Britain, France, and Germany* (University of North Carolina Press, pp. 199, $2.50), W. A. McConagha conducts a Cook's tour which has the virtues and the vices of that admirable institution. One covers the ground and sees the principal sights—Taff Vale and the General Strike of 1926, the C. G. T. and the C. G. T. U., Marx and Lasalle. But with only the space of a single chapter to devote to the development of the labor movement in each of the three countries studied, viewing the landmarks leaves little time for analysis or reflection. Particularly is the author cramped by the necessity of crowding the rich British experience since the Combination Acts of 1799 and 1800 into less than seventy pages. The story of the French and German labor movements, somewhat less familiar to American students, is more satisfactorily told. The author, disclaiming any originality of treatment, indicates that his purpose in preparing the book was to make a knowledge of labor institutions in other countries more conveniently accessible to American students. While this goal has been adequately fulfilled, the work's usefulness might have been increased had the author raised his sights a little. The brief introductory note on the theory of organized labor movements might well have been expanded, and one feels the want of a summary chapter which a truly comparative approach would require. The book is weak in recent developments, the British

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story, for example, ending with the Trade Disputes Act of 1927. Quarreling with the limits which the author imposed upon himself should not, however, obscure the fact that within those limits he has produced an excellent and useful survey of an interesting field.—C. HERMAN PRITCHETT.

The American Civil Liberties Union, under the dynamic leadership of Roger N. Baldwin, has been a consistent defender and exponent of civil liberties for all groups, classes, and individuals. Its activities in behalf of freedom in education are factually and sympathetically presented by Davidson Edison Bunting in *Liberty and Learning* (American Council on Public Affairs, pp. xiii, 147, cloth $2.50, paper $2.00). The story shows how the Union has pioneered, along with the American Association of University Professors and the American Federation of Teachers, in defending the freedom of teachers and teaching, particularly since World War I, which brought forth new problems in the sphere of the Bill of Rights. The Union, which has coöperated with these other organizations, has gone further into the defense of the freedom of discussion by students on the campus. It fought the anti-evolution law of Tennessee in the Scopes case. It has suffered many technical defeats, but has helped to make the way hard for administrative authorities who would dismiss a teacher for unpopular views. The study is a sort of short handbook of information on cases, participants, issues, books, and articles in this important field. As George Counts says in the introduction, it is "very timely."—H. C. NIXON.

There seems to be increasing suggestion in our democracies that we must have more integration of the spiritual with the political domains if we are to meet the challenge in the world today. This concern lends justification, of course, to a study such as the monograph by Ananda K. Coomaraswamy, of the Boston Museum of Fine Arts, entitled *Spiritual Authority and Temporal Power in the Indian Theory of Government*, published as Volume 22 of the American Oriental Series (American Oriental Society, pp. 87). The analysis, drawing upon the mythologies and the sacred writings of India, will have more interest for the specialist than for any wide public. Highly documented, the text is studded with citations and with Indian terminology in parentheses, yet written in readable style. Almost astonishing is the abundance of the sex motif that runs through the literary sources concerned. The male and the female principles of the universe are represented widely in the relations also of *regnum* and *sacerdotium*—wherein, unlike the similar analogies to be found in the philosophies of medieval Europe, the originative male authority is symbolized by the priest, while *regnum* is but feminine. All this, while more

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poetical than in any objective sense analytical, is not entirely without meaning to a present-day comprehension. Underlying the mythologies there is represented, in a way that reminds of Plato, that the essence of all true government, whether of the individual or of the community as a whole, is self-government. At the same time the self, in knowing itself, yields to the mystic ocean of Being. Whatever this thought may be, it is not a self-aggrandizement such as might condemn a "Christian morality fit for slaves." If it is a primitive level of political thought and feeling that is depicted, it is less so than the Machiavellian tendencies that have influenced the modern West to a degree that we have only now begun to realize.—WALTER SANDELIUS.

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RECENT PUBLICATIONS OF POLITICAL INTEREST
BOOKS AND PERIODICALS

CLYDE F. SNIDER
University of Illinois

AMERICAN GOVERNMENT AND PUBLIC LAW

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